

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 99

REAL ESTATE BROKERS AND SALESPERSONS

Subchapter 1 General Provisions

§16-99-1	Objective
§16-99-2	Definitions
§16-99-3	Conduct
§16-99-3.1	Disclosure of agency
§16-99-4	Client's account; trust funds; properties other than funds
§16-99-5	Notification and filing of names, addresses, and changes
§16-99-5.1	Involuntary inactive license status
§16-99-6	Display of license
§16-99-7	Renewal of license
§16-99-8	Restoration of forfeited license
§16-99-9	Reinstatement of suspended license
§16-99-10	Revoked license
§16-99-10.5	Other requested material
§16-99-10.6	Surrender of real estate license
§16-99-11	Advertisement
§16-99-12	Exam site solicitation

Subchapter 2 Applications

§16-99-17	Forms and instructions
§16-99-18	Examination application
§16-99-19	Licenses application
§16-99-20	Repealed
§16-99-21	Denial
§16-99-22	Demand for a hearing
§16-99-23	Proceedings upon demand for hearing
§16-99-24	Certification of experience
§16-99-25	Falsification of application

Subchapter 3 Examination

- §16-99-29 Examination for broker and salesperson license
- §16-99-30 Examination subject matter

Subchapter 4 Education and Experience

- §16-99-36 Education requirement
- §16-99-37 Education waiver
- §16-99-38 Experience requirement
- §16-99-39 Equivalent experience
- §16-99-40 Repealed
- §16-99-41 Repealed
- §16-99-42 Repealed
- §16-99-43 Repealed
- §16-99-44 Repealed
- §16-99-45 Repealed
- §16-99-46 Real estate education fund

Subchapter 5 Registered Real Estate Schools

- §16-99-50 Policy
- §16-99-51 Registered school
- §16-99-52 Home study courses
- §16-99-53 Application for registration
- §16-99-53.1 Alternative forms of school bond
- §16-99-54 Changes in school's owners
- §16-99-55 Display of certificate of registration and instructor's certificate
- §16-99-56 Classrooms
- §16-99-57 Courses
- §16-99-58 Faculty
- §16-99-59 Tuition and other charges
- §16-99-60 Books and supplies
- §16-99-61 Certificate of completion
- §16-99-62 Records
- §16-99-63 Reports
- §16-99-64 Inspections
- §16-99-65 Renewals
- §16-99-66 Advertising
- §16-99-67 School brochure or catalogue

- §16-99-68 Prohibited advertising practices
- §16-99-69 Revocation or suspension of school registration, course approval, and instructor certification
- §16-99-70 Hearings
- §16-99-71 Direct management and supervision of real estate activities

Subchapter 6 Practice and Procedure

- §16-99-75 Administrative practice and procedure

Subchapter 7 Recovery Fund

- §16-99-79 Recovery fund settlement procedures

Subchapter 8 Oral Testimony

- §16-99-83 Oral testimony

Subchapter 9 Continuing Education

- §16-99-87 Definitions
- §16-99-88 Continuing education implementation
- §16-99-89 Equivalent continuing education
- §16-99-90 License renewal procedure
- §16-99-91 Activating an inactive real estate license
- §16-99-92 Continuing education hours in license restoration and reinstatement cases
- §16-99-93 Excess continuing education hours
- §16-99-94 Continuing education certificates of completion
- §16-99-95 Duplicate continuing education hours
- §16-99-96 An instructor who is a licensee
- §16-99-97 Extensions
- §16-99-98 Prior to offering a continuing education course
- §16-99-99 Application for registration as a continuing education provider
- §16-99-100 Criteria for approving and certifying continuing education courses
- §16-99-101 Courses not acceptable for continuing education requirements
- §16-99-102 General processing procedures for a continuing education course offering
- §16-99-103 Subsequent offerings of a certified continuing education course
- §16-99-104 Application and criteria for certification of a continuing education instructor

§16-99-105	Biennial provider registration, biennial instructor and course certification
§16-99-106	Forfeited registration, certification; reinstatement
§16-99-107	Fees; renewal of provider registration, course, instructor, certificate of completion of course, nonrefundable application fees
§16-99-108	Revocation or suspension of a continuing education course certification
§16-99-109	Revocation or suspension of a continuing education provider registration
§16-99-110	Revocation or suspension of a continuing education instructor certification
§16-99-111	Record keeping responsibilities of a continuing education provider
§16-99-112	Record keeping information and retention period
§16-99-113	Advertising
§16-99-114	Prohibited advertising practices
§16-99-115	Continuing education course entrance requirements
§16-99-116	Discontinuing course offerings
§16-99-117	Material change
§16-99-118	Master continuing education instructors list
§16-99-119	Review, evaluation, and investigation
§16-99-120	Continuing education provider disclosure statement
§16-99-121	Faculty
§16-99-122	Display of certificate of registration and instructor's certificate
§16-99-123	Classrooms
§16-99-124	Classroom compliance
§16-99-125	Tuition and other charges
§16-99-126	Books and supplies
§16-99-127	Hearings

Subchapter 10 Condominium Hotel Operators

§16-99-147	Registration
§16-99-148	Fidelity bond
§16-99-149	Client's trust funds, accounting, and records
§16-99-150	Conduct

SUBCHAPTER 1

GENERAL PROVISIONS

§16-99-1 Objective. This chapter, adopted by the real estate commission, hereafter referred to as "commission," is intended to clarify and implement chapter 467, Hawaii Revised Statutes, as amended, to the end that the provisions thereunder, for the protection of the general public in its real estate transactions, may be best effectuated and the public interest most effectively served. [Eff 12/26/74; am and ren §16-99-1, 4/27/81; am and comp 6/28/82; comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-4)

§16-99-2 Definitions. As used in this chapter:

"Approved curriculum" means the curriculum or courses approved by the commission as satisfying the education requirements established for real estate broker and salesperson license examination applicants.

"Branch office" means any place of business other than the principal place of business or site office, from which real estate business is conducted. Each branch office shall be licensed by the real estate commission and conform with the permitted use under the zoning code of the county in which the branch office is situated.

"Broker in charge" means the broker licensee designated by the principal broker as the person directly in charge of and responsible to the principal broker for the real estate operations conducted at a branch office. The principal broker may designate a broker licensee as the broker in charge for the real estate operation conducted at the principal place of business.

"Broker-salesperson" means a broker licensee who places that person's own license under another broker as an employee or independent contractor.

"Commingling" means to mingle or mix, such as a deposit of client's funds in the broker's personal account.

"Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

- (1) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;
- (2) The operation of the franchisee's business pursuant to that plan or system is substantially associated with the franchisor's trademark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
- (3) The franchisee is required to pay, directly or indirectly, a franchise fee.

"Franchise fee" means any charge or fee that a franchisee or sub-franchisor is required to pay or agrees to pay for the right to enter into and operate a business under a franchise agreement.

"Franchisee" means the person to whom a franchise is granted.

"Franchisor" means the person who grants a franchise.

"Inactive" means that a licensee holds a current license which is not forfeited, suspended, revoked, or terminated and cannot transact any real estate business until the license is reinstated to active status. When a licensee is placed on an "inactive status" the licensee shall surrender to the commission the certificate of license together with the licensee's last active license identification card.

"Involuntary inactive" means the commission has placed the licensee in an inactive status because the licensee's employing or associating broker, principal broker, broker-in-charge, or branch office license has been forfeited, suspended, revoked, terminated, or placed inactive pursuant to section 16-99-5.1.

"Licensee" includes corporations, copartnerships, or persons licensed as a real estate broker or real estate salesperson under chapter 467, HRS.

"Place of business" means the physical place where business is conducted other than a post office box, telephone, telephone answering service, letter or mail drop service, or motor vehicle within the State. The place of business shall conform with the permitted use under the zoning code of the county in which the place of business is situated. The commission may use as guidelines but is not limited to the following factors in finding that a broker is maintaining a place of business: physical presence of the broker during reasonable scheduled office hours; on-site maintenance of confidential client's file which are immediately accessible to the real estate commission upon request; the broker's prominent display of the firm name which is registered with the real estate commission and the listing of the firm name where permissible in the building directory; the broker's operation of a place of business directly accessible to the public; the broker's keeping of personnel and compensation records on all real estate salespersons employed or associated with a broker. Client files as used in this definition includes but is not limited to: real estate contracts, escrow records, trust account records, and confidential client data. "Place of business" does not include the operation of a place of business designed to evade the requirements of the definition as set forth in this paragraph.

"Principal broker" means the person directly in charge of and responsible for all of the real estate operations of the licensed firm. An independent broker is considered a firm.

"Site office" means a temporary place of business approved by the commission for a period of six months, subject to extension by the commission for good cause, upon a request made prior to the expiration of the six months,

being other than the principal place of business or branch office from which real estate sales transactions are engaged in relative to a new real estate condominium project, real estate subdivision, or time share project. The office shall be situated on or adjacent to the specific property, condominium project, subdivision, or time share project to be considered a site office, and the broker shall present evidence that the site office conforms with the respective county or city and county requirements pertaining to temporary land use. The provisions of section 16-99-5(f) shall apply to site offices.

"Supervision" means the act of directing, inspecting, and reviewing.

"Trust properties" includes funds in the form of cash or checks and personal property, other than cash or checks, received by the licensee to be held in trust for the benefit of the depositor of the property and or for the benefit of third persons.

"Wall certificate" means a certificate of license issued by the real estate commission to a qualified individual either as a salesperson or broker. [Eff 12/26/74; am and ren §16-99-2, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-4(2), 467-25.5) (Imp: HRS §§467-1.5, 467-7, 467-8, 467-11, 467-12, 467-14, 467-25.5)

§16-99-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

(b) The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.

(c) The licensee shall not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

(d) The licensee shall recommend that title be examined, survey be conducted, or legal counsel be obtained when the interest of either party requires it.

(e) The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, clients' moneys, rental deposits, rental receipts, and other like items.

(f) The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, reviewed by the principal broker or broker-in-charge of the licensee, expressing the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.

When working with a seller in a "For Sale By Owner" or a "Courtesy to Broker" situation, the licensee shall disclose who, if anyone, the licensee represents and who will pay a commission, if any.

(g) The licensee shall not acquire, rent, lease, or exchange an interest in or buy, rent, lease, or exchange for one's self, any member of the licensee's immediate family or firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee's firm, or listed with any other firm or licensee without making the true position known in writing to the listing owner or property owner. When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall fully inform the principal broker of the licensee's intention to sell, lease, exchange, or rent, and of the licensee's interest in the property. The licensee shall reveal the interest to the purchaser, lessee, or tenant in writing prior to accepting any offer.

(h) When acting as agent in the management of property, the licensee shall not accept any commission, rebate, or profit on expenditures for or from an owner, without the owner's and principal broker's knowledge and consent.

(i) The broker shall not submit or advertise property without written authorization, or franchise, and in any offering the price quoted shall not be other than that agreed upon with the owner as the offering price.

(j) A licensee shall transmit immediately all written offers in any real estate transaction as defined in section 16-99-3.1 to the listing broker who has a written unexpired exclusive listing contract covering the property. Each written offer, upon receipt by the listing broker, shall be transmitted to the seller immediately. In the event that more than one formal written offer on a specific property is made before the owner has accepted an offer, any other formal written offer presented to the broker, whether by a prospective purchaser or another broker, shall be immediately transmitted to the owner for decision. If an offer or counter offer is rejected, the rejection shall be noted on the offer or counter offer, or in the event of seller's or buyer's neglect or refusal to do so, the broker for the rejecting party shall note the rejection on the offer or counter offer and a copy returned immediately to the originator of the offer or counter offer.

(k) The broker shall not compensate a licensee of another broker in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other broker. This requirement shall not apply

in cases where the licensee is receiving compensation from a former broker for commission earned while affiliated with that former broker.

(l) A licensee shall not place any sign or advertisement indicating a property is for sale, rent, lease, or exchange without the written authorization of the owner or seller and approval of the principal broker or broker in charge.

(m) There shall be a principal broker or a broker in charge at the principal place of business and a broker in charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.

(n) A broker shall maintain a place of business located in this State at a business address registered with the commission from which the broker does, in fact, conduct business and where the broker's books and records are maintained.

(o) Prior to the time the principal broker or the broker-in-charge is absent from a place of business or branch office for more than fourteen calendar days, the principal broker shall advise the commission in writing about the absence. During those periods of absence another broker shall be designated, in writing, as the temporary principal broker or temporary broker-in-charge. In case of prolonged illness or death where the principal broker or broker-in-charge is unable to act, another broker shall be designated as the temporary principal broker or broker in charge within thirty days of the illness or death. A temporary principal broker or broker-in-charge arrangement shall not exceed a period of six months, with the right to extend prior to expiration for another six months for good cause and with the approval of the commission.

(p) No licensee shall act as a broker, broker-salesperson, or salesperson for more than one firm or office except that this subsection shall not apply to those situations as described in subsection (o).

(q) Within ten days of receiving a written request, it shall be the responsibility of the principal broker or the firm to provide broker applicants formerly or presently employed or associated with them with an accurate experience certification statement in the form provided by the commission and an affidavit and documentary evidence of the required real estate transactions. Falsification of information contained in the certification form shall be cause for revocation or suspension of the broker's or firm's license and of the salesperson's license if that person is a party to the falsification.

(r) A broker licensee shall not sit for any Hawaii real estate broker or salesperson examination during the period the licensee has a real estate broker license unless specifically permitted by the commission.

(s) A salesperson licensee shall not sit for any Hawaii real estate salesperson examination during the period the licensee has a real estate salesperson license unless specifically permitted by the commission.

(t) An exclusive listing shall state a definite termination date.

(u) The licensee shall not add to or modify the terms of an instrument previously signed or initiated by a party to a transaction without written consent of all the parties.

(v) The licensee shall not convert other people's moneys to the licensee's own use.

(w) Violation of any part of this chapter may be cause for revocation or suspension of license. [Eff 12/26/74; am and ren §16-99-3, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am 7/11/87; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-14)

§16-99-3.1 Disclosure of agency. (a) As used in this section:

"Buyer" includes a vendee, lessee, party to an exchange, or grantee of an option.

"Buyer's agent" means a real estate broker who acts as the agent of the buyer.

"Contract between the buyer and seller" includes a "deposit receipt, offer and acceptance", an option, an offer to purchase, a sales contract, an offer to lease, or a lease.

"Listing broker" means the real estate broker who obtains a listing of real estate for sale, lease, exchange (residential, timeshare, industrial, or commercial) or for an interest in a residential cooperative housing corporation.

"Seller" includes a vendor, lessor, party to an exchange, or grantor of an option.

"Selling broker" means a real estate broker who acts in cooperation with a listing broker and who finds and obtains a buyer in a transaction.

"Subagent" means a real estate broker or salesperson to whom an agent delegates agency powers.

"Transaction" means any sale, lease, rent, or exchange of real estate (residential, timeshare, industrial, or commercial) transaction or a sale or exchange of, or option involving, an interest in a residential cooperative housing corporation, but excluding leases for one year or less.

(b) At the time a listing broker obtains a listing, the listing broker shall disclose the following:

(1) Whether the seller authorizes the listing broker to appoint seller's subagents through a multiple listing service or otherwise; and

(2) Whether the seller authorizes the listing broker to share commissions with seller's subagents or buyer's agents.

The disclosure shall be in writing, dated, and signed by the seller and the listing broker.

(c) Prior to preparing any contract between the buyer and the seller, the following disclosure shall be made at least once to the buyer, in writing or orally:

- (1) If the licensee acting as the listing broker is acting alone and providing services to the buyer, the licensee shall disclose who the licensee represents in the transaction;
- (2) If the licensee, acting in cooperation with a listing broker, has found the buyer in the transaction, the licensee shall disclose who the licensee represents in the transaction; or
- (3) If there is no listing broker, each licensee providing services to the buyer with respect to the transaction shall disclose whether the licensee represents the buyer or the seller in the transaction.

(d) Prior to presenting a contract between the buyer and the seller to the seller, the following disclosure shall be made at least once to the seller, in writing or orally:

- (1) The licensee acting as the listing broker shall disclose to the seller who the selling broker represents in the transaction; or
- (2) If there is no listing broker, each licensee involved in the transaction shall disclose to the seller whether the licensee represents the buyer or the seller in the transaction.

(e) Any disclosure required by subsections (c) and (d) shall be confirmed in writing in a separate paragraph titled "AGENCY DISCLOSURE" in the contract between the buyer and the seller. The title shall be in no less than ten-point bold print. No particular disclosure language is required. To assist licensees, the commission approves the following language:

"AGENCY DISCLOSURE(S):

_____, and all licensees

(Print name of Selling Broker,)

(or Listing Broker if acting alone)

employed by or associated with the broker, represents the _____.

By _____

(Buyer or Seller)
initialling below, the Buyer and Seller confirm that oral or written disclosure of such representation was provided to them before the signing of this contract.

Buyer's initials

Seller's initials"

(f) Unless specifically restricted by the real estate broker in writing, any real estate salesperson, employed by or associated with a real estate broker, shall be authorized to make the required disclosures on behalf of the real estate broker. Failure to make the disclosure required by subsections (b), (c), and (d) or to obtain the written confirmation thereof shall subject the real estate broker and the real estate salesperson to disciplinary action by the commission.

(g) A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee made a full disclosure of the type of representation the licensee will provide and shall briefly describe the type of representation the licensee will provide to the buyer and to the seller. A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and the seller is not sufficient.

(h) A licensee representing a buyer shall disclose such agency to the seller, or the listing broker if there is a listing broker, orally or in writing, before negotiations are initiated. The licensee shall disclose to the seller, or the listing broker if there is a listing broker, whether the licensee is, or intends to be, the buyer, orally or in writing, before negotiations are initiated.

(i) If any change occurs in a transaction which makes a prior written or oral disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall promptly make a revised written disclosure if the prior disclosure was in writing, or a revised oral disclosure if the prior disclosure was made orally, to the buyer or seller, or both, as the case may be. Any revised written disclosure shall include the date of the revised disclosure and be acknowledged separately by the signature of the buyer or seller, or both, as the case may be.

(j) The obligation of either the seller or buyer to pay compensation to a broker is not determinative of the agency relationship.

(k) Nothing in this chapter shall affect the validity of title to real property transferred, based solely on the reason that any licensee failed to conform to the provisions of this chapter. [Eff 7/11/87; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-14 (12))

§16-99-4 Client's account; trust funds; properties other than funds. (a) Every broker who does not immediately place all funds entrusted to the broker in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment from the funds upon demand.

(b) Every broker shall retain for at least three years records of all trust funds which the broker has received. All records and funds shall be subject to inspection by the commission or its representative. The three year requirement shall be for real estate license law purposes only. The broker may be required to keep records for a longer period of time for other purposes. The records shall be kept in Hawaii in accordance with standard accounting principles and shall clearly indicate the following:

- (1) Names of the persons from whom funds are received, for whom deposited and to whom disbursed;
- (2) Dates of receipt, deposit, and withdrawal and amounts received, deposited, withdrawn, and disbursed;
- (3) Description of the trust fund and the purpose for its establishment;
- (4) Purposes for the money; and
- (5) Other pertinent information concerning the trust fund transactions.

(c) Trust fund accounts shall be either interest bearing or non-interest bearing, as agreed to in writing between the owner of funds and the principal broker or broker in charge receiving the funds and all other individuals that are parties to the real estate agreement. For interest bearing accounts, these same parties to the real estate agreement shall also agree to in writing as to who shall pay for any early withdrawal penalty. The principal broker or broker in charge shall keep any interest belonging to others in the trust fund account and shall not commingle the accrued interest with the principal broker's or broker in charge's general operating account or with the principal broker's or broker in charge's own funds. All agreements relating to disbursements of the accrued interest from the client trust account shall be in writing, signed by the owner of the trust fund, the principal broker, or broker in charge receiving the funds and all other individuals that are parties to the real estate agreement. The interest accrued on any trust account deposit shall be disbursed in strict compliance with the written disbursement agreement. In the absence of a written agreement, any interest accrued shall be paid to the owner of the funds.

(d) Every broker shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized depository, which is federally insured, by the next business day following their receipts.

(e) Every principal broker or broker in charge who receives personal property, other than funds, in trust for other people, by the next business day shall safeguard the property by placing the property in a secure place located in the State of Hawaii.

(f) The principal broker or broker in charge shall retain for at least three years records of all personal property other than trust funds coming into the possession of the principal broker or broker in charge as trustee. All records of

the personal property held in trust shall be subject to inspection by the commission or its representative and kept in the State of Hawaii at the place of business. The records shall clearly indicate the following:

- (1) Date of receipt of the personal property to be held in trust;
- (2) A description of and the type of trust property received;
- (3) From whom the personal property held in trust was received;
- (4) For whose benefit the personal property is being held in trust; and
- (5) The date and to whom the personal property is delivered.

(g) Property of others coming initially into the possession, custody, control of a salesperson or broker salesperson, to be held in trust for the benefit of the depositor, and or for the benefit of third persons, shall be received on behalf of the salesperson's or broker salesperson's principal broker or broker in charge, and shall be delivered immediately by the next business day after receipt to the salesperson's or broker salesperson's principal broker or broker in charge, unless the salesperson or broker salesperson is instructed as to another time in writing by the depositor. The received property shall include but not be limited to: cash or checks as down payments, earnest money deposits, security deposits, rental income; other checks payable to third persons or trust accounts; and personal property other than cash or checks.

(h) Principal brokers shall not commingle client's funds with other moneys; provided, however, it shall not constitute commingling to:

- (1) Hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror;
- (2) Hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree; or
- (3) Maintain a minimum amount in the client's account to keep the account open.

The fact that a check is being held in an uncashed form in paragraph (2) shall be specifically disclosed in writing to the seller or offeree before acceptance of the offer. Commingling of the client's funds with other moneys shall include, but not be limited to, keeping undisputed commissions, management fees, and other fees in the broker's client trust account beyond a reasonable time after those commissions, management fees, and other fees have been earned.

(i) A salesperson or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or broker in charge. A principal broker may authorize a salesperson or employee, in writing, to place trust properties on behalf of the broker anywhere the principal broker could place them, but shall not authorize any other disposition. A principal broker shall be held responsible for any trust properties the broker authorizes a salesperson or employee to handle.

(j) A principal broker shall not allow any person to have custody or control of trust properties held by the principal broker except as provided in chapter 467, HRS, and this chapter.

(k) A principal broker may allow a broker in charge of a branch office to have custody and control of trust properties on behalf of the principal broker on transactions transpiring at that branch office. The principal broker and broker in charge shall be jointly responsible for any trust properties the principal broker authorizes the broker in charge to handle.

(l) Information about escrow accounts and records for real estate transactions under the real estate broker shall be retained for at least three years, subject to inspection by the commission or its representative at the place of business. [Eff 12/26/74; am and ren §16-99-4, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-14)

§16-99-5 Notification and filing of names, addresses, and changes.

(a) Each licensee shall file the licensee's residence and mailing address with the commission and shall notify the commission of any change in writing, within ten days of the change, on a form provided by the commission.

(b) Each broker shall file with the commission:

- (1) The address of the broker's place of business and the name and license number of the principal broker in charge;
- (2) The address of each branch office and the name and license number of the broker in charge immediately responsible for each branch office;
- (3) The name and license number of each licensee employed by or associated with the broker and the office in which the licensee is engaged; and
- (4) In the case of a copartnership or corporation, the names and addresses of the partners or officers and directors, as the case may be, and shall immediately notify the commission in writing of any and all changes which occur.

(c) Upon closing the principal place of business or a branch office, the broker shall immediately notify the affected employees or associates, and within ten days of the date of closing shall provide the commission in writing on a form provided by the commission, the names of the affected employees or associates.

(d) A principal broker or broker in charge shall release a licensee from employment or association within ten days upon written request. Any person licensed by the commission who changes employing or associating broker shall notify the commission in writing, on a form provided by the commission, within

ten days of the change, or immediately place the person's license on inactive status together with return of the person's wall certificate and identification card to the commission.

(e) Any licensee whose license has been forfeited, suspended, revoked, or terminated shall immediately cease such employment and shall return the licensee's wall certificate and identification card to the commission.

(f) No licensee shall be employed or associated with a real estate broker whose place of business is so far distant from the salesperson's residence that reasonable supervision cannot be maintained by the broker; e.g., a broker situated on Oahu shall not employ or associate with a licensee residing on another island, unless, the broker establishes a branch office on the island where the licensee resides and the licensee is employed or associated at that branch office. This subsection does not prohibit a licensee from being temporarily assigned to the site office situated on another island.

(g) A licensee who changes residence to another state or country shall place the licensee's license on inactive status.

(h) All changes submitted to the commission pursuant to this section shall be effective when the changes, made on a form provided by the commission, are approved by the commission. [Eff 12/26/74; am and ren §16-99-5, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-1.5, 467-8, 467-11, 467-12)

§16-99-5.1 Involuntary inactive license status. (a) A broker and salesperson license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The principal broker's or broker-in-charge's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
- (2) The corporation or partnership is no longer registered with the business registration division;
- (3) The corporate broker or partnership license becomes inactive, terminated, revoked, forfeited, or suspended;
- (4) The principal broker is unable to act in the case of prolonged illness or death and no commission approved temporary acting principal broker has been designated;
- (5) The broker has no approved place of business; and
- (6) The principal broker changes residence to another island or moves out-of-state and no principal broker has been designated to manage or supervise the real estate activities of the firm.

(b) A branch office license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The broker or broker-in-charge's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
 - (2) The broker-in-charge is unable to act in the case of prolonged illness or death and no commission approved temporary acting broker-in-charge has been designated;
 - (3) The broker-in-charge changes residence to another island, or moves out-of-state and no broker-in-charge has been designated to and supervise the real estate activities of that office.
- (c) A principal broker may place an associating or employing salesperson in inactive status after written notification to the affected salesperson. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-11, 467-12)

§16-99-6 Display of license. The certificate of license shall be conspicuously displayed within the premises of the place of business or branch office where the licensee is engaged, and the licensee shall have in possession at all times, a current license identification card. [Eff 12/26/74; am and ren §16-99-6, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-14) (Imp: HRS §§467-8, 467-12)

§16-99-7 Renewal of license. For an even-numbered year when December 31 falls on a non-working day, renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of the first working day of the year. Failure to submit a completed renewal application and failure to pay the renewal fee when due or if check is not honored by the bank for whatever reason shall constitute automatic forfeiture of license. The principal broker shall see to it that all licensees are currently licensed at all times during employment or association. [Eff 12/26/74; am and ren §16-99-7, 4/27/81; am and comp 6/28/82; comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-11, 467-14)

§16-99-8 Restoration of forfeited license. (a) A license which has been forfeited for failure to submit a completed renewal application and failure to pay the biennial renewal fee as required may be restored by the commission:

- (1) Within one year of the date of forfeiture upon written application and payment of all delinquent biennial renewal fees that are due and owing from the date of forfeiture to and including the current biennial renewal period for which the license is being restored,

penalty fee, for each delinquent renewal period, and the applicable recovery fund assessments;

- (2) After one year but less than two years from the date of forfeiture upon written application and payment of all delinquent biennial renewal fees that are due and owing from the date of forfeiture to and including the current biennial renewal period for which the license is being restored, penalty fee, for each delinquent renewal period, and recovery fund assessments; provided, the commission may require the applicant to successfully complete real estate courses approved by the commission as a condition to restoration of the license; and
- (3) After two years from the date of forfeiture upon written application and payment of all biennial renewal fees that are due and owing from the date of forfeiture to and including the current biennial renewal period for which the license is being restored, penalty fee for each delinquent renewal period, and the applicable recovery fund assessments; provided the commission may require the applicant to successfully complete real estate courses approved by the commission or to apply for and obtain a passing score on the written examination prescribed by the commission as a condition to restoration of the license. In the event the commission determines that applicant is no longer qualified as a real estate broker or salesman, the application for restoration shall be denied and the person shall be treated as a new applicant and be required to complete the education requirements and to file an application for examination. In such event all fees, except the application fee, paid with the restoration application shall be refunded. However, no reexamination shall be required of any person who, while a licensee in good standing, assumed or assumes any elected or appointed public office or joined or joins the military branch of this State or of the United States.

(b) The restoration procedures as specified in subsection (a) apply to a forfeited license for failure to submit a completed renewal application or failure to pay the required biennial renewal fee or fees and does not apply to the reinstatement of a forfeited license which has been forfeited for failure to apply for reinstatement of a license at the end of license suspension, pursuant to section 92-17(c)(3), HRS.

(c) The following factors may be used in imposing a community service condition to restoring a license:

- (1) The circumstances surrounding the forfeiture of the license;
- (2) The licensee's remorse in the situation;

- (3) The amount of consumer harm attending the forfeiture; and
- (4) Licensee's ability to provide a specialized contribution to the public.

The commission shall specify the hours and scope of the community service in a letter to the accepting community service agency. The licensee shall execute a notarized statement that the community service rendered is accurate and reliable and that the licensee shall indemnify the State and the accepting community service agency from any and all harm, injury, or damages resulting from such service. The accepting agency shall issue, upon the licensee's completion of the community service condition, a letter informing the commission that the licensee has completed the community service condition and whether the agency accepts or rejects any or all of the recommendations or findings of the licensee produced as part of the community service work, and for what reasons. The letter shall be issued when the licensee submits a time sheet indicating that the licensee has completed the community service hours and the date and nature of the service rendered. [Eff 12/26/74; am and ren §16-99-8, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-11, 92-17(c)(3) and (d))

§16-99-9 Reinstatement of suspended license. A person whose license has been suspended may apply for reinstatement of license, provided, that the commission may require one or a combination of the following: successful completion of real estate course or courses approved by commission; application for and a passing score on the written examination prescribed by the commission; an oral examination of the applicant. Application for reinstatement shall be accompanied by the reinstatement fee, and other applicable fees, such as renewal fees and recovery fund assessments. [Eff 12/26/74; am and ren §16-99-9, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9, 467-9.6, 467-14)

§16-99-10 Revoked license. A person whose license has been revoked shall apply for a new real estate salesperson license by filing an application and complying with all requirements for new applicants. The commission may waive the applicable education or experience requirements, of section 467-9.5 pursuant to sections 16-99-37, and 16-99-39. [Eff 12/26/74; am and ren §16-99-10, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9, 467-14)

§16-99-10.5 Other requested material. The commission may require the person requesting reinstatement of a suspended license or applying for a new license following license revocation to submit other information and documents that may be helpful to the commission in evaluating the person's request. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-9, 92-17(c)(3))

§16-99-10.6 Surrender of real estate license. (a) A licensee who has no pending complaints, investigations, disciplinary petitions filed against the licensee or disciplinary hearings before the real estate commission may surrender the person's real estate license, and shall:

- (1) Return the licensee's pocket identification card and wall certificate to the commission; and
 - (2) Cease conducting any real estate activities.
- (b) Should the person desire to engage in any real estate activities the person shall obtain a new license as a new applicant for a salesperson license. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-10)

§16-99-11 Advertisement. (a) No real property shall be advertised except in the full name of the broker as licensed by the commission, including a trade name previously registered by the broker with the business registration division and with the commission.

(b) Reference to the name of the salespersons, as licensed by the commission, may be made in advertisements if the advertisement identifies them as salespersons and also names the broker and identifies the broker as such. The preceding also applies to real property owned by the licensee.

(c) No licensee shall be allowed to advertise "For Sale by Owner," "For Rent by Owner," "For Lease by Owner," "For Exchange by Owner."

(d) Disclosure of the individual's status as a real estate licensee whether active or inactive is required in all advertising and promotional material.

(e) A leasehold or fee simple property advertised for sale in the newspaper medium, promotional matter or otherwise, shall be properly identified as such. The designation (L) to identify a leasehold and (FS) to identify a fee simple property may be used.

(f) All advertising materials, including but not limited to business cards shall identify the licensee with the licensee's brokerage firm or employing broker, and specify whether the licensee is a broker (B), or salesperson (S), or if a current

member of the Hawaii Association of Realtors, Realtor (R) or Realtor-Associate (RA).

- (g) Any broker who operates under a franchise shall:
 - (1) Include in its name, the franchise name and register same with the business registration division, department of commerce and consumer affairs and the commission; the height of the lettering of the broker's name shall be not less than twenty per cent of the height of the franchise name, and franchise logotype; and
 - (2) Conspicuously display on or in all its advertising and other printed materials generally available to the public except as provided in this paragraph, a statement to the effect that the broker's real estate brokerage office is independently owned and operated. The statement shall not be required for:
 - (A) "For sale" signs located on the premises of specific properties for sale; and
 - (B) "Spot" classified advertising by a franchise in newspapers, magazines, or other publications of specific properties for sale. "Spot" classified advertising means advertisements of three column inches or less pursuant to the provisions of this section.

(h) For purposes of this section, the term "broker's name" is that name which previously appeared on the real estate broker's license granted by the commission prior to the inclusion of the franchise name and logotype.

(i) Any advertising materials containing any address or telephone number other than the street address or telephone number of the place of business shall be respectively identified as such and also contain the street address or telephone number of the place of business identified and designated as such. [Eff 12/26/74; am and ren §16-99-11, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-7)

§16-99-12 Exam site solicitation. On the day of a real estate licensing examination, a licensee shall not at the exam site or at any place on the property where the exam site is located, directly or indirectly, recruit, solicit, offer to employ, discuss employment with, or distribute literature promoting the licensee to any person who sits for that examination. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-25)

SUBCHAPTER 2

APPLICATIONS

§16-99-17 Forms and instructions. An application filed with the commission shall be prepared in accordance with and contain the information called for in the application form provided by the commission, or any instructions which may be required by the commission with respect to filing. All applications shall be accompanied with a non-refundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff 12/26/74; am and ren §16-99-17, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-9, 467-9.6, 467-11, 467-14, 26-9(k))

§16-99-18 Examination application. (a) Applications for examination together with the required non-refundable fee shall be filed with the testing agency contracted by the commission to administer the examination by the first working day of the month of the examination.

(b) Applicants for the broker and salesperson examination shall satisfy the applicable education and experience requirements by the date of examination. In the event the applicant has not satisfied the requirements, the examination score shall be declared void.

(c) Applicants for the broker and salesperson examination shall not be required to submit documentation showing completion of the prerequisite education requirement or an education waiver at the time of filing of the application for examination with the testing agency. The documentation shall be submitted at the time of application for license under section 16-99-19(a)(3), except where documents are required to be submitted in accordance with sections 16-99-37 and 16-99-29(g), for an education waiver.

(d) Applicants for the broker examination shall submit certification of experience under section 16-99-24, together with the application for examination. In the event the certification of experience is not submitted with the application, the testing agency shall reject the application.

(e) Examination fees shall be determined by contract between the commission and the testing agency. [Eff 12/26/74; am and ren §16-99-18, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-9.5, 467-9.6)

§16-99-19 Licenses application. (a) All applications for a real estate salesperson or broker license shall:

- (1) Be submitted at least fifteen days before the next commission meeting and shall be accompanied by the required fee;
- (2) Include a recent photograph of the head and shoulders only, approximately 2 1/2" x 2 1/2" in size; and
- (3) Be accompanied by supporting documents to satisfy the applicable education requirement. Applications not accompanied by supporting documents shall be rejected; provided, if the applicant has qualified for a waiver under section 16-99-37, equivalent education, the applicant need not provide the supporting documents. In the event an applicant has not satisfied the applicable education and experience requirement their examination score shall be declared void and license application rejected.

(b) An application for a branch office license shall be submitted at least fifteen days before the next commission meeting and shall be accompanied by the required branch office license fee. [Eff 12/26/74; am and ren §16-99-19, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99-20 Repealed. [R 3/3/84]

§16-99-21 Denial. In the event an application for admission to the examination, for issuance, reinstatement, or restoration of a license is denied, the commission shall notify the applicant by letter of the commission's action which shall include a concise statement of the reasons therefor and if the applicant is entitled to a hearing, a statement informing the applicant of the right to a hearing if the applicant so desires. [Eff 12/26/74; am and ren §16-99-21, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-22 Demand for a hearing. Any person whose application for admission to the examination, for the issuance, reinstatement, or restoration of a license has been denied by the commission, shall be entitled to a hearing; provided that a demand for a hearing is filed with the commission within sixty days of the date of the letter informing the applicant of the denial of application; and provided further that this section shall not apply to a denial based on the failure to file an application within the period provided by this chapter. [Eff 12/26/74; am and ren §16-99-22, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-23 Proceedings upon demand for hearing. If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff 12/26/74; am and ren §16-99-23, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-24 Certification of experience. (a) Applicants for the broker examination shall submit to the commission a completed application for certification of experience together with: a non-refundable fee as prescribed by the director of the department of commerce and consumer affairs, experience certification statements signed and notarized by the principal broker or broker in charge and documentary evidence of ten real estate transactions in which the applicant participated within the last four years immediately preceding the application showing the applicant has satisfied the experience requirement under section 16-99-38 or documentary evidence of an official nature to prove they have equivalent experience under section 16-99-39.

(b) The commission shall verify the applicant's dates of association and release of the experience certification statements with the records of the commission.

(c) An applicant shall not receive credit for any portion of experience or transaction:

- (1) If the applicant failed to notify the commission on a form provided by the commission of any change in association or employment;
- (2) During the period which applicant's license was forfeited, inactive, suspended, revoked, or terminated; or
- (3) During the period in which the license of the employing or associating broker was forfeited, inactive, suspended, revoked, or terminated.

(d) If the applicant has satisfied the experience requirement, the commission shall issue to the applicant a certification of experience which the applicant shall submit with the application for the broker examination. The certificate of experience shall be valid for one year from the date of issuance.

(e) The commission shall reject an application for certification of experience if the application is incomplete; or if the applicant's real estate salesperson license is in forfeited, suspended, revoked, or terminated status unless otherwise approved by the commission.

(f) The principal broker or broker-in-charge shall certify the applicant's experience including applicant's participation in the real estate transactions

submitted. [Eff and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-9.5, 26-9(k))

§16-99-2 Falsification of application. The commission may deny an applicant admission to the examination, or issuance of license, void applicant's examination score, or revoke a license on the ground of falsification of any information supplied in the application for examination, request for certification of experience, application for license, or supporting documents. [Eff and comp 6/28/82; comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-14)

SUBCHAPTER 3

EXAMINATION

§16-99-29 Examination for broker and salesperson license. (a) No license shall be issued to any person unless the person takes and passes a written examination as prescribed by the commission for the license applied for. The minimum passing score for the uniform and the State portions of the examination shall be seventy for salesperson applicants and seventy-five for broker applicants. Failure to obtain a passing score in any part thereof shall result in failure of the examination as a whole and the entire examination shall be repeated by candidate.

(b) Any eligible person shall forfeit the examination fee if the person does not sit for the examination.

(c) Unsuccessful candidates, rejected applicants, and persons granted withdrawal who wish to sit for subsequent examinations shall file a new application and comply with all requirements each time.

(d) The examinations shall be given only on established dates and at designated locations in the State. Exceptions to established dates shall be made for the benefit of candidates who for religious reasons may not sit on scheduled examination dates. Conditions and procedures for admittance to this special date shall be determined by the commission and testing agency.

(e) Examinations shall be conducted in accordance with procedures formulated by the testing agency authorized by the commission to administer examinations. Failure to follow such procedures shall result in immediate disqualification from the examination and may bar candidates from being examined in any future examinations.

(f) Any applicant who passes the salesperson or broker examination shall be required to apply for the person's active or inactive license within ninety

calendar days after the date of the examination; otherwise, the person shall be deemed an unsuccessful applicant and shall be subject to examination again.

(g) At the location for examination, all candidates for salesperson or broker examination shall present a current real estate school completion certificate or current education waiver certificate. Candidates for broker examination shall submit experience certificate with the examination registration. [Eff 12/26/74; am and ren §16-99-29, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-9) (Imp: HRS §§467-8, 467-9, 467-9.5)

§16-99-30 Examination subject matter. Applicants shall demonstrate, by passing with a grade satisfactory to the commission, a written examination given by it and appropriate to the license sought, that they have a reasonable knowledge of general principles and practices of real estate transactions and the law and rules pertaining to or relating to real estate, and such other subjects and matters which the commission or its designated examining agency determines to be essential to the protection of the general public in its real estate transactions. [Eff 12/26/74; am and ren §16-99-30, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-8)

SUBCHAPTER 4

EDUCATION AND EXPERIENCE

§16-99-36 Education requirement. The education requirement for the salesperson license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of forty class hours and conforming to the approved curriculum for salesperson adopted by the commission or such equivalent education or experience as shall be determined by the commission. The education requirement for the broker license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of forty-six class hours and conforming to the approved curriculum for brokers adopted by the commission or equivalent education or experience as shall be determined by the commission. A "class hour" as used in this section means sixty minutes of classroom instruction. [Eff 12/26/74; am and ren §16-99-36, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9.5)

§16-99-37 Education waiver. (a) The commission may waive the respective education requirements for applicants for the salesperson and broker license examinations for those who hold:

- (1) A current license which was active within one year immediately prior to date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;
- (2) For graduates of an accredited law school;
- (3) For graduates of accredited colleges and universities who have majored in real estate;
- (4) For those who successfully completed at least twelve semester credits in real estate courses at an accredited college or university; and
- (5) For those who have received professional designation and recognized certificates of completion as accepted by the commission including a GRI designation; certificate in advanced real estate from the University of Hawaii, small business management program.

(b) All requests for waiver of the educational requirements shall be submitted in writing, together with all supporting documents of an official nature to the commission for its review, prior to filling the application for examination. An applicant shall use, only once, any of the enumerated basis, as set forth in subsection (a) of this section for which an education waiver is granted, in qualifying to take the salesperson or broker licensing exam but not for both.

(c) An approved education waiver shall be valid for one year from the date of issuance. [Eff 12/26/74; am and ren §16-99-37, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-38 Experience requirement. (a) The applicant for the broker license shall:

- (1) Have been engaged in this State in full-time occupation as a real estate salesperson for a period of at least two years within the last five years prior to the license examination date, or shall have obtained equivalent education or experience as determined by the commission; and
- (2) Have either:
 - (A) Participated in at least ten written real estate transactions under applicant's Hawaii associating or employing broker within the last four years immediately preceding the application for an experience certificate of which three shall

- be executed listing contracts, or commercial or industrial listings, that have closed escrow or equivalent as determined by the commission and three shall be sales contracts or commercial or industrial leases that have closed escrow, or equivalent as determined by the commission; or
- (B) Two years full-time experience as a property manager for one or more condominium associations; and management or co-management of two hundred forty units or ten condominium associations or its equivalent as determined by the commission; and shall have submitted to the commission a statement from a certified public accountant verifying that the recordkeeping and accounting procedures used by the applicant meet accepted minimum standards; and a verification of the applicant's duties from the employer or condominium association president.

The principal broker or broker in charge shall submit an affidavit and documentation in support of the transactions.

(b) "Full-time occupation as a real estate salesperson" means at least forty hours a week are regularly devoted to real estate. Forty hours a week shall be the maximum number of hours a candidate may be credited toward the experience requirement for full-time experience. A pro rata credit shall be given to part-time activity as a real estate salesperson. For example, if a person worked twenty hours a week, it will take the person four years to fulfill the experience requirement. [Eff 12/26/74; am and ren §16-99-38, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-39 Equivalent experience. (a) The commission may waive part of the two-year, full-time experience requirement for the broker license where the commission is persuaded that the applicant is otherwise and similarly qualified by reason of practical experience in a business allied with or related to real estate. The following guidelines shall be used to determine whether the experience requirement has been satisfied:

- (1) One and one-half years waiver to attorneys that have been licensed and in practice for at least two years in this State;
- (2) Maximum of one year waiver for four or more years full-time experience in escrow or title work in this State within the last ten years;
- (3) Maximum of one year waiver for full-time experience as a real property appraiser with a designation from an appraisal association recognized by the commission;

- (4) Maximum of one year waiver for full-time experience as a property manager with a designation from a property management association recognized by the commission;
- (5) Maximum of one year waiver for four or more years full-time experience as a trust officer handling real property in this State within the last ten years;
- (6) Maximum of one year waiver for four or more years full-time experience as a loan officer of a bank, lending institution, mortgage company, or other financial institution, in a capacity directly related to financing of real estate in this State within the last ten years;
- (7) Maximum of one year waiver for completing and obtaining a degree with a major in real estate at an accredited university or college;
- (8) Maximum of one year waiver for full-time experience as a full-time licensed real estate broker or real estate salesperson in another state with similar education requirements. The amount of waiver shall be computed as follows: For broker experience: ratio 1-1 (Example: one month experience equal to one month waiver). For salesperson experience: ratio 1-3 (Example: three months experience equal to one month waiver);
- (9) Maximum of six months waiver for obtaining a Graduate Realtors Institute (GRI) designation; and
- (10) Maximum of six months waiver for completion of the small business management program, University of Hawaii, in their real estate certification program.

A maximum allowable waiver of one and one-half years may be granted for combinations of paragraphs (1) to (10).

(b) All requests for equivalency to the experience requirement shall be submitted in writing together with all supporting documents of an official nature with the request for certification of experience. [Eff 12/26/74; am and ren §16-99-39, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-40 Repealed. [R 3/3/84]

§16-99-41 Repealed. [R 3/3/84]

§16-99-42 Repealed. [R 3/3/84]

§16-99-43 Repealed. [R 3/3/84]

§16-99-44 Repealed. [R 3/3/84]

§16-99-45 Repealed. [R 3/3/84]

§16-99-46 Real estate education fund. The commission may authorize the use of funds deposited in the real estate education fund for the benefit of and improvement of services to the consuming public, licensees, commissioners, and staff. The education fund may be used for classes, media exposure, participation in national associations, publications, research, seminars, studies, and any other educational purpose as the commission may determine. [Eff and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-19)

SUBCHAPTER 5

REGISTERED REAL ESTATE SCHOOLS

§16-99-50 Policy. (a) A registered school shall not offer courses which may be used to fulfill the educational requirements for a real estate license unless it first registers with the commission and complies with the requirements of this subchapter.

(b) "School" as used in this subchapter includes, but is not limited to, a private school, or an accredited college or university offering courses used to fulfill the educational requirements for initial licensing. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-51 Registered school. (a) A registered school shall be a school which applies for a certificate of registration from the commission and which is

found by the commission to have met the requirements imposed by chapter 467, HRS, and this chapter.

(b) A registered school shall have on file at the school's principal office, for commission inspection upon request, unit and daily lesson plans implementing the schools approved curriculum. Such plans should specify at minimum: the objectives of the unit and daily lesson plan stated in student performance terms; and an evaluative method to determine that the students have been taught the objectives of the unit and daily lesson. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99-52 Home study courses. (a) Any school offering home study courses, to the extent applicable, shall meet all standards prescribed by this subchapter.

(b) Home study programs shall contain at least ten contact hours by a certified instructor with students, at least seven hours of which shall relate to Hawaii law and practice.

(c) The curriculum for home study courses for salesperson and broker license candidates shall consist of the total number of class hours as respectively prescribed in section 16-99-36.

(d) Home study program offerings shall be first approved by the commission and shall be offered by a school only to those students who because of hardship and unusual circumstances are unable to attend any prelicense license course for a continuous period of six months. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-53 Application for registration. (a) A registration shall be granted to the owner for a specific school registered under a particular name to teach specific real estate courses.

(b) Application for the initial registration of a school shall be made to the commission not less than ninety days before the opening date of the school.

(c) The following shall accompany an application:

- (1) Current certificates of clearance from the county building department, the county fire department, and the state department of health for each classroom;
- (2) A description of the courses to be offered which contains the course title, curriculum, curriculum objectives in student performance terms, evaluative procedure to be used to demonstrate

- the accomplishment of the curriculum objectives and procedures for student evaluation of the instructor;
- (3) A copy of the student enrollment or student registration form;
 - (4) A copy of the school catalogue or brochures and a statement of the content of advertising and the media to be used;
 - (5) A schedule of all fees, tuition, and charges to be made, including the advance deposit charged per student and statement of refund procedures;
 - (6) The name and qualification of the school's principal;
 - (7) The names of the school's instructors and the instructor's teaching qualifications and experience;
 - (8) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:
 - (A) The maximum number of students permitted in each broker classroom as determined by the county building department multiplied by the advance deposit charged per student for the broker course multiplied by the maximum number of broker courses to be held at any one time during the first year of the school's registration; and
 - (B) The maximum number of students permitted in each salesperson classroom as determined by the county building department multiplied by the advance deposit charged per student for the salesperson course multiplied by the maximum number of salesperson courses to be held at any one time during the first year of the school's registration. In no event shall the amount of the bond be less than \$2,000. The bond shall be issued by a surety authorized to do business in the State. An accredited college or university, shall not be required to submit to the commission a surety bond or license fee as required by this section;
 - (9) A license fee;
 - (10) A statement of ethical practices;
 - (11) If the applicant is a partnership, the names of the partners in the entity and a copy of the partnership agreement;
 - (12) If the applicant is a corporation, the names of any persons who own five per cent or more of the stock of the entity, and a copy of the articles of incorporation; and
 - (13) Other additional information as may be required by the commission.

(d) A school shall not begin operation until it has registered with the commission.

(e) A school shall not solicit students until it has registered with the commission. However, a school in the process of obtaining a license may advertise "subject to completion of all registration requirements" and the statement shall be a part of all representations.

(f) A school shall limit its course offerings to courses approved by the commission.

(g) The registration of a school shall expire on December 31 of every even-numbered year. Registrations shall be renewed biennially.

(h) A school ceasing to operate shall so inform the commission and shall surrender its registration within thirty days after cessation of operations. The registration of such a school shall be canceled automatically thirty days after cessation of operations unless a longer period of inactivity has been applied for in writing and approved by the commission. For the purposes of this subsection, "a school ceasing to operate" means a school which has not held any classes for a period of three months.

(i) A registered school shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the school's facilities violate county building, fire, or health codes. The school may resume its operations when it has remedied the violation. [Eff and comp 3/3/84; am 10/3/85; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-53.1 Alternative forms of school bond. (a) Where a surety bond required by sections 16-99-53 and 16-99-65 cannot reasonably be secured and the school owner has received three letters rejecting the owner's application for a surety bond, the real estate commission, after a review of the reasons for rejection, may accept other alternative forms of security including but not limited to:

- (1) Submission of an executed agreement between the school owner and two other commission approved registered real estate school owners guaranteeing that they will honor all students contracts that were signed or approved by the school owner should the owner be unable to complete the instructing of such courses because of the owner's death, disability, bankruptcy, extended absence from the State beyond four months; and
- (2) Submission of either, certificate of deposit from a federally- insured institution, located in this State, in the amount equal to the required bond; cashier's check from a federally-insured institution, located in this State, in the amount equal to the required bond; an

irrevocable letter of credit in a form approved by the commission drawn upon a bank or savings and loan association, located in this State, in the amount of the bond required or any other alternative security approved by the commission for substitution of the bond.

(b) Any certificate of deposit, cashier's check, irrevocable letter of credit or other approved alternative security shall be issued from a federally-insured institution located in this State, made payable to the real estate commission or in the case of a letter of credit shall designate the real estate commission as beneficiary for the benefit of any eligible person sustaining damage resulting from the school owner's failure to faithfully, promptly, and truly perform the instruction of any real estate courses contracted to teach. The commission shall retain possession of the security as prescribed by this section for a period of six years dating from the first day of the school's registration and dating subsequently each six years from the first day of the school's biennial registration renewal. In the event any of the alternatives to the surety bond earns interest while in the possession of the real estate commission, the interest shall belong to the school's owner. At the expiration of six years holding period as calculated pursuant to this section, the real estate commission shall release all alternative forms of school bonds in amounts remaining as security if no claims have been made against any amounts during the time the commission held the security and if the school owners, heirs, personal representatives, successors, or permitted assigns execute appropriate release forms indemnifying the real estate commission and the State of Hawaii.

(c) Cancellation of surety bond. A registered school that has been notified that the school's surety bond required by this subchapter has been cancelled, shall not schedule any course offerings until such time that the school submits to the commission proof of a valid surety bond. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 26-9(p)) (Imp: HRS §467-25.5)

§16-99-54 Changes in school's owners. (a) Any change in the ownership status of a school shall be approved by the commission.

(b) A change in partners shall be deemed a change in ownership. Any change in ownership of fifty per cent or more of a corporation's outstanding capital stock or any change in ownership of any number of shares of stock which results in the transferee thereof becoming the owner of fifty per cent or more of the outstanding capital stock, shall be deemed a change in ownership.

(c) The new owner shall submit written evidence to the commission that as of the effective date of the change in ownership, the new owner shall:

- (1) Assume liability for all or substantially all of the school's outstanding debts incurred as a direct result of the school's educational activities; and
- (2) Honor all student contracts that were signed or approved by the school's authorities before the effective date of the change in ownership. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-55 Display of certificate of registration and instructor's certificate. Each school granted a certificate of registration and each instructor granted an instructor's certificate shall prominently display it in its business office at all times. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-56 Classrooms. (a) Every school shall have and maintain classrooms which have adequate space, seating, equipment, and instructional material. Each classroom shall be approved by the commission and shall have current certificates of clearance from the county building department, the county fire department, and the state department of health. Classrooms shall be subject to inspection by the commission prior to approval or subsequent thereto during regular school hours.

(b) Classrooms shall conform to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-57 Courses. (a) The initial curriculum and any additional courses offered by a school shall be approved by the commission.

(b) Broker and salesperson classes shall not be held together unless approved by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-58 Faculty. (a) Each school shall designate some person as principal.

- (b) The principal shall be responsible for:
 - (1) Complying with the commission's rules relating to real estate schools;

- (2) Providing reports and information as may be required by the commission;
- (3) Informing the commission in writing five business days prior to any changes in school policies, programs, personnel, facilities, tuition, calendar, and all other matters changing the status of the school as originally licensed;
- (4) Advertising by the school; and
- (5) Directing and supervising the school staff and program.
- (c) Every instructor shall be biennially certified by the commission.

Certification shall be obtained by each instructor for each course the instructor desires to teach. The commission may prior to the instructor's initial certification and prior to any recertification require the instructor to do either or both of the following: to complete a commission sponsored or approved instructor's workshop, or to appear before the commission to demonstrate the instructor's command of and ability to communicate the pre-license course.

(d) Each instructor shall initially take and pass a written examination as prescribed by the commission and shall:

- (1) Hold a current Hawaii real estate broker's license, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirement for a Hawaii broker's license; or
- (2) Hold a degree in law and be an attorney licensed and in practice in the area of real estate for at least two years in this State; or
- (3) Hold an appointment to the real estate faculty of an accredited college or university; or
- (4) Have graduated from an accredited college or university, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirements for a Hawaii broker's license.

(e) Each instructor shall have had one year prior teaching experience in real estate within three years preceeding the application for certification and possess in addition to the requirements in subsection (d):

- (1) A certificate of completion at a special real estate instructor institute issued within a year immediately preceeding the request for certification; or
- (2) A certificate of completion from a professional real estate course leading to a professional designation accepted by the commission; or
- (3) An appointment to the real estate faculty of an accredited institution of higher education; or

- (4) A certificate of completion from an accredited salesperson and broker course; or
- (5) Other as the commission may determine (including successfully passing a qualifying real estate license examination).
- (f) School personnel shall comply with applicable state department of health requirements.
- (g) Every instructor, every three years, as a condition of recertification for each course the instructor chooses to teach, shall take and pass an instructor's exam, demonstrating the instructor's current command of the pre-license course.
- (h) A registered school shall obtain the approval of the commission prior to scheduling the appearance of a guest lector or substitute teacher as an instructor for a specified topic of instruction included in its approved curriculum. A guest or substitute teacher shall not be used for more than fifty per cent of its scheduled classes. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-59 Tuition and other charges. (a) Tuition rates and all other charges shall be published in the school catalogue. No school shall deviate from its published tuition rates and charges.

(b) Tuition and other charges collected from enrollees shall be refunded in full by the school if the course for which the tuition and charges were collected is not started on the date published by the school in its catalogue or advertisements.

(c) Tuition and other charges shall be specifically set forth in the school registration form. The registration form shall expressly state the school's policy regarding the return of tuition and other charges when a student is dismissed or withdraws voluntarily. Each student shall acknowledge acceptance of the school's tuition policies on the school's registration form. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-60 Books and supplies. (a) Where the student purchases books and supplies from a bookstore or other source, the student may retain or dispose of those items at the student's own discretion.

(b) Where the school furnishes the books and supplies, with the cost thereof included in the total charge payable to the school for the course, and the student is dismissed or withdraws voluntarily prior to the completion of the course, the school shall refund in full the amount of the charge for the unissued books and supplies. Issued items may be disposed of at the discretion of the

student. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-61 Certificate of completion. A certificate of completion shall be issued by the school in a form and size approved by the commission, and shall be awarded to a student only upon attending eighty per cent of the scheduled classes and upon completion with a passing grade of a course of study conforming to the approved curriculum. The certificate shall be valid for a period of one year from the date of issuance. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99-62 Records. (a) Each school shall maintain records on the following:

- (1) Class attendance of each student;
- (2) Tuition and other charges collected from each student;
- (3) The names of the students to whom it issued a certificate of completion, the course for which the certificate of completion was issued, and the date when the certificate of completion was issued; and
- (4) The qualifying exams administered for purposes of issuing a school certificate of completion.

(b) These records shall be maintained for a three-year period, shall be kept current, and shall be available for inspection by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-63 Reports. Each school may be required to submit reports to the commission and may be subject to review regarding its educational programs conducted in conformance with this chapter. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-64 Inspections. Registered schools and schools that have applied for registration may be inspected by the commission. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-65 Renewals. (a) Applications for renewal of a school's registration shall be submitted by December 31 of every even-numbered year.

(b) The following shall accompany an application:

- (1) A renewal fee;
- (2) A statement as to the enrollment and advance deposit charged per student for each of the school's broker and salesperson courses offered during the preceding registration period;
- (3) The dates and locations of course of study to be offered if the registration is renewed; and
- (4) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:
 - (A) The largest number of students enrolled in the school's broker course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the broker course; and
 - (B) The largest number of students enrolled in the school's salesperson course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the salesperson course.

In no event shall the amount of the bond be less than \$2,000. The bond shall be issued by a surety authorized to do business in the State.

(c) A registration shall be renewed if the school meets all of the then existing applicable requirements of the commission including but not limited to a reasonable student exam passing percentage, demonstrated evidence that the school curriculum objectives have been taught, certificates of completion issued within the past year, for each instructor, who completed successfully a commission sponsored or approved prelicensed instructor's workshop, and an update of the information required for its original application for registration.

(d) An accredited college or university shall not be required to submit to the commission a surety bond or pay the renewal fee as required by this section. [Eff and comp 3/3/84; am 10/3/85; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-66 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by an accredited real estate school for the purpose of promoting the school or soliciting students and shall include, but not be limited to, all printed and visual communications, such as newspaper advertisements,

direct public mailings, books and periodicals, television and radio commercials, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, at the minimum, the place where a school catalogue or brochure may be obtained.

(c) Prior to publication and dissemination, all schools shall submit to the commission for review all copies or proofs of advertising, brochures, and promotional materials covering its real estate course.

(d) The commission, at any time may require that a school furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered by the commission, with the retractions published in the same manner as the claims themselves.

(e) A school shall be held strictly responsible for the acts and promises of all its agents or persons engaged in soliciting students. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-67 School brochure or catalogue. (a) Each school shall distribute to prospective students and other interested persons, a brochure or catalogue. Each brochure or catalogue shall include, at minimum, the following:

- (1) Name, address, and telephone number of the school;
- (2) Date of issue;
- (3) School's owner or owners and principal;
- (4) Any available locations, and if the class location is tentative, that fact shall be disclosed;
- (5) School's calendar;
- (6) Class hours;
- (7) Schedule of all charges;
- (8) A statement that the school's curriculum is available for any student's inspection upon request;
- (9) Course titles and objectives;
- (10) Course outlines or description;
- (11) Length of course;
- (12) School's policy on attendance, absences, and make-up;
- (13) School's policy on grading, reporting of grades, and standards required;
- (14) School's policy on student conduct;
- (15) School's policy on refund of tuition and other fees collected;
- (16) If a minimum number of students is necessary to operate a class, that fact shall be disclosed and a minimum number given; and

- (17) If the course or any portion of the services are advertised as being free, a complete disclosure of all conditions shall be stated.
- (b) Each brochure or catalogue may include the following:
 - (1) School's financing plans; and
 - (2) School's placement services.
- (c) Each brochure or catalogue shall be updated periodically so that the information contained in it is current. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-68 Prohibited advertising practices. (a) No school shall provide any information to the public or to prospective students which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it is intended to influence.

(b) No school shall use any name, other than the name under which it registered with the commission, for advertising or publicity purposes.

(c) No school shall advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A school may indicate that it is "registered" with the commission to conduct courses to qualify applicants for the real estate license examination.

(d) No school shall make any warranties or guarantees that a student will pass the real estate license examination by taking its course.

(e) No school shall advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written evidence of this fact is filed with the commission.

(f) No school shall solicit students in "help wanted" or other employment columns in newspapers or other publications or in any other form of advertising other than that which shows itself clearly to be that of a school seeking to enroll students.

(g) No school shall make or imply any guarantee of employment or income to any student or prospective student unless the school can in fact guarantee employment or income and the school does so in writing.

(h) No school shall advertise a course of instruction which has not been approved by the commission unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the approval of the commission. No money shall be collected from any prospective student for enrollment in such a course until it has been approved by the commission. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-69 Revocation or suspension of school registration, course approval, and instructor certification. The commission may revoke or suspend the registration of any real estate school, the approval of any real estate course, or the certification of any instructor for any of the following causes:

- (1) The school, instructor, or course falls below the minimum requirements established by the commission including a student exam passing percentage;
- (2) The school or instructor violates any ordinances, codes, statutes, or rules relating to real estate schools or instructors;
- (3) The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations;
- (4) The school or instructor distributes to any person copies of examination questions or otherwise communicates to any person examination questions, without the prior written approval of the copyright owner of the examination questions so distributed or communicated; or
- (5) The instructor sits for a Hawaii real estate license examination during the period the instructor is certified by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-70 Hearings. (a) When the commission denies an application for registration or renewal of a school, or deems it proper to revoke or suspend the registration of any school, the approval of any course, or the certification of any instructor, the commission shall notify in writing the person or school involved of the commissioner's action. The notification shall include a concise statement of the reasons for the commission's action and a statement that the person or school involved may request a hearing.

(b) Requests for a hearing shall be filed with the commission within sixty days of the date of the letter informing the school or instructor of the commission's action.

(c) If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff and comp 3/3/84; am 9/29/86; comp 11/3/90; comp 2/25/91] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-71 Direct management and supervision of real estate activities.

The real estate activities of each firm shall be under the direct management and supervision of a principal broker. A principal broker shall be responsible for:

- (1) Securing full compliance with the real estate license statutes and rules promulgated pursuant thereto;
- (2) The firm's accounting practices;
- (3) The moneys and other consideration in the custody of the firm which belong to clients or persons with whom the firm deals on behalf of the clients;
- (4) The books, records, and documents material to the firm's real estate business;
- (5) All real estate contracts the firm enters into or in which the firm is involved as an agent;
- (6) Ensuring that all licensees associated with the firm maintain valid current real estate licenses including the delivery or forwarding to the commission where the principal broker or broker-in-charge has expressly agreed to deliver or forward the application for license or renewal with appropriate fees on behalf of a salesperson or broker; and
- (7) Disbursements made from trust fund accounts. [Eff 9/29/86; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §§467-1, 467-8, 467-14)

SUBCHAPTER 6

PRACTICE AND PROCEDURE

§16-99-75 Administrative practice and procedure. The rules of practice and procedure for real estate shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 9/29/86; am and comp 11/3/90; comp 2/25/91] (Auth: HRS §§91-2, 442-5) (Imp: HRS §§91-2, 442-5)

SUBCHAPTER 7

RECOVERY FUND

§16-99-79 Recovery fund settlement procedures. Upon the occurrence of all of the following, the commission may settle any subsequent claim against the real estate recovery fund involving a licensee that was previously named in an order and on whose behalf the commission had been required to make payments out from the recovery fund:

- (1) The claimant is seeking recovery against the same licensee as named in an order for which the commission had been required to make a payment from the recovery fund;
- (2) The claimant is similarly situated as the claimant named in an order for which the commission has been required to make a payment from the recovery fund;
- (3) The claimant notifies the commission in writing within the same time period specified in section 467-18, HRS, that it has commenced an action for a judgment which may result in collection from the real estate recovery fund;
- (4) The claimant files a verified claim with the commission stating with particularity the reasons, grounds, and evidence in support of claimant's request for settlement directly with the commission;
- (5) The claimant gives reasonable notice to the licensee at the licensee's last known address by registered or certified mail, restricted delivery to addressee only, return receipt requested that claimant intends to settle the claim directly with the commission together with a copy of the verified claim. Where it is impossible to give licensee notice by mail, claimant shall give notice to licensee by publication once in a newspaper of general circulation in the State, that the claimant intends to settle the claim directly with the commission, a summary of the reasons, grounds, and evidence supporting claimant's relief from the recovery fund. Any notice given shall also contain a statement to the effect that any payment from the recovery fund shall result in an automatic termination of the individual's license;
- (6) The licensee has had an opportunity to respond within a reasonable time, in writing, to claimant's verified claim;
- (7) That claimant is not a spouse of the licensee, or the personal representative of such spouse;
- (8) The claimant has made all reasonable searches and inquiries to ascertain whether the licensee is possessed of real or personal property or other assets, which may be used to satisfy the claim and that by such search the claimant has discovered no such assets;
- (9) The commission is satisfied, that there is sufficient evidence to support a settlement of the claim; and

- (10) The settlement is in the best interest of the real estate recovery fund. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §467-16)

SUBCHAPTER 8

ORAL TESTIMONY

§16-99-83 Oral testimony. (a) The commission shall accept oral testimony on any item which is on the commission's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the commission no later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The commission may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the commission;
- (3) The commission may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony, at the beginning of the testimony, shall identify themselves and the organization, if any, that they represent;
- (5) The commission may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The commission may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this chapter shall require the commission to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to the hearing relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this chapter shall prevent the commission from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the commission on any particular matter on the commission's agenda. [Eff and comp 11/3/90; comp 2/25/91] (Auth: HRS §467-4) (Imp: HRS §92-3)

SUBCHAPTER 9

CONTINUING EDUCATION

§16-99-87 Definitions. As used in this subchapter:

"Beyond professional entry" means the course objectives involve learning outcomes which help the licensee develop more than minimal competency.

"Certified" means that the commission has made a determination that the course, course offering, or instructor satisfies all requirements prescribed by statutes and rules.

"Clock hours" means sixty minutes of classroom instructions excluding time for registration, evaluation, and testing.

"Consumer protection" means course content relating to section 467-14, HRS, or section 16-99-3.

"Continuing education" means clock hours of core courses and elective courses, that involve areas relating to consumer protection and professional standards and practice, and which courses are determined by the commission as developed for a difficulty level beyond professional entry and satisfying any one of the following purposes: protecting the general public in real estate transactions, enabling the licensee to serve the objectives of the consumer in a real estate transaction, enabling the licensee to maintain, develop, or improve the licensee's competency and professionalism in a changing marketplace.

"Continuing education hours" means the ten mandatory hours as required in section 467-11.5, HRS.

"Core" course means one or more mandatory continuing education course or course offering certified and designated as a "core" course by the commission which each licensee must take and complete.

"Completion of course" means licensee's orderly attendance throughout the entire course including, where required by the course or course offering, the passing of any course examination.

"Course and course offering" means a continuing education module of instruction certified by the commission, consisting of a minimum of three and one-third clock hours.

"Disciplined by the real estate commission" means the commission's issuance of a final order in which a licensee is found in violation of a specific real estate law or rule; or means a commission approved settlement agreement in which a licensee admits to violating a specific real estate law or rule.

"Elective" course means a continuing education course certified by the commission and designated as such which the licensee may choose to complete for continuing education hours as opposed to being mandated by the commission.

"Instructor" means an individual who teaches either a specific certified continuing education course or an individual, certified by the commission to teach any course within a commission designated course category such as, real estate law, general brokerage, commercial real estate, property management, construction and development, and real estate finance.

"Material change" means a significant deviation, in one or more aspects from the course as originally certified by the commission including a change in course length, clock hours but not including changes designed to reflect recent changes in statutes, regulations, or case law.

"Passing" of a course means, where required, obtaining on a final exam, a score approved by the commission as indicative of a licensee's understanding of the course offering.

"Professional standards and practice courses" means course content relating to real estate professional development.

"Provider" means any person, partnership, association, corporation, educational organization, school, or other entity which sponsors, offers, organizes, develops, delivers, or provides for the instruction of a real estate continuing education course.

"Reexam" means one retake of a course exam consisting of new questions.

"Registered" means a person, partnership, association, corporation, educational organization, school, or other entity has submitted all required documentation for registration as a provider and that the documentation satisfactorily supports the person's, partnership's, association's, corporation's, educational organization's, school's or other entity's administrative ability for delivering continuing education courses. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-88 Continuing education implementation. (a) Each real estate salesperson and broker intending to renew a license on an active status for the license renewal period beginning January 1, 1991, shall satisfy the license renewal requirement of ten hours of continuing education required by section 467-11.5, HRS, on or before December 30, 1990, by completing three real estate courses developed by the commission in real estate contracts, financing, laws, and ethics or by completing other core courses as prescribed by the commission.

(b) Each real estate salesperson and broker intending to renew a license on an active status for the license renewal period beginning January 1, 1993, and thereafter shall satisfy the license renewal requirement of ten hours of continuing education required by section 467-11.5, HRS, on or before December 30, 1992, and thereafter on or before December 30 of each even-numbered year, by completing a minimum of one commission designated core course and two other

commission certified elective courses. The commission may approve and certify other elective courses consistent with the definition of continuing education. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-89 Equivalent continuing education. (a) In reviewing a request for an equivalency of the required continuing education hours as specified in section 467-11.5, HRS, the commission may be guided but may not be limited by all of the following:

- (1) The request is for a course completed, within the current biennium prior to license renewal, on or before the license expiration date;
- (2) The request is for a course not specifically excluded by the provisions specified in section 16-99-101;
- (3) The request is for a course or courses with a minimum of ten contact hours;
- (4) For the period prior to the ending of the biennium of December 31, 1990, the course objectives and content of the requested course must be one hundred per cent similar to the objectives and content of the course developed by the commission in real estate contracts, financing, laws and ethics pursuant to section 16-99-88(a); and
- (5) For the biennium periods thereafter, the course objectives for the requested course equivalency must satisfy the requirements of section 16-99-100.

(b) The licensee has the burden of presenting the commission with sufficient information and documentation in support of the grant of the equivalency, including an objective method demonstrating that the licensee has learned the information, knowledge, and concepts of the equivalent course. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-90 License renewal procedure. In renewing a license on an active status, the licensee shall provide the commission evidence of completing ten hours of continuing education which have been completed within the current license biennium. Such evidence shall include but not be limited to the applicant's submission of the original certificates of course completion attached to the license renewal application. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-91 Activating an inactive real estate license. Prior to making a written request to activate an inactive status license, an applicant who has been

inactive for one or more renewal periods, shall first satisfy the prescribed continuing education hours of one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the inactive licensee may either retake and pass the applicable salesperson or broker prelicense examination. The requirements of this section are in addition to other requirements of this subchapter and chapter 467, HRS, for activating an inactive status license. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-92 Continuing education hours in license restoration and reinstatement cases. Prior to applying to the commission for reinstatement of, or for restoration of a license, an applicant shall satisfy the prescribed continuing education hours for one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the applicant may either take and pass the applicable salesperson or broker prelicense examination or complete such other courses as prescribed by the commission or both. The requirements of this section are in addition to other conditions imposed by the commission, and other conditions stated in the order of suspension, and other applicable requirements of this chapter and chapter 467, HRS. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-93 Excess continuing education hours. Except as permitted by sections 16-99-91 and 16-99-92, continuing education clock hours obtained in excess of ten hours cannot be carried forward to satisfy the continuing education requirements for any subsequent license renewal. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-94 Continuing education certificates of completion. The form of a continuing education certificate of completion of course shall be as prescribed by the commission. The number of continuing education hours appearing on each certificate shall be the number of hours previously approved by the commission. A continuing education provider may offer a class for more hours than previously approved by the commission. But the number of course hours appearing on the continuing education course completion certificate shall be only for the amount

as previously approved by the commission. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-95 Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course that is substantially similar to a course for which the licensee has already received a certificate. A continuing education provider shall not issue a licensee, a certificate for substantially the same course completed by the licensee. "Substantially similar" as used in this section means that at minimum, seventy-five per cent of the course content of a course is repeated in another course offering. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-96 An instructor who is a licensee. In satisfying the continuing education hours of a license period, an instructor who is a real estate licensee, may use once in any biennium, the clock hours for each course topic taught. The one time use applies even when the instructor has taught the course more than once. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-97 Extensions. Upon application, on a form provided by the commission, and for good cause shown as determined by the commission, the commission may extend the time for completing the continuing education hours. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-98 Prior to offering a continuing education course. An individual or organization may solicit students for, advertise for, take reservations for a continuing education course offering, when the proposed continuing education course is:

- (1) Certified by the commission;
- (2) Identified by a specified commission assigned course number;
- (3) Sponsored by a registered continuing education provider; and
- (4) Designated as being taught by a certified continuing education instructor. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-99 Application for registration as a continuing education provider.

(a) A continuing education provider shall be responsible for the formation, where applicable, and administration of the course offering. An application for registration as a continuing education provider shall be made to the commission on a form prescribed by the commission. The application shall be made at least forty-five days prior to the day of the first anticipated course offering. The application shall be submitted with a nonrefundable processing fee in an amount as initially set forth in this subchapter, and thereafter, pursuant to rules adopted by the director of commerce and consumer affairs and include at least the following:

- (1) Name, address, phone number of the continuing education provider. When the provider is a corporation, partnership, sole proprietor, or uses a trade name, the name of the provider including a trade name shall be as previously registered with the business registration division and where applicable as previously registered with the commission;
- (2) Name, address, phone number of the continuing education provider's owner, administrator, and instructor. When the owner of the continuing education provider is not a natural person, the names, titles, and addresses of the directors, officers, or partners of the entity together with a stamped filed copy of the articles of incorporation or partnership agreement on file with the State of Hawaii business registration division must be submitted to the commission;
- (3) A current resume and description of qualifications of all proposed instructors, when the proposed instructor is not on the commission's master list of instructors;
- (4) Title and description of each course initially proposing to be offered together with a completed application for each core or elective course certification made pursuant to section 16-99-100;
- (5) The course objectives written in student performance terms detailing what the student should be able to do upon completion of the course together with a statement detailing a method to measure the student's mastery and understanding of the course objectives;
- (6) Dates, times, specific locations including addresses, buildings, room numbers where each course is to be given;
- (7) A notarized statement that the classroom where each course is given complies with the county building department, county fire department, and the state department of health requirements;

- (8) An outline or syllabus indicating in the margin the sequence of and the number of minutes per topic or subtopic, and the related reference source;
- (9) The name of the instructor for each course and the total course time including time for breaks and where required time for exams;
- (10) A student attendance policy, procedure for monitoring attendance and record keeping for a minimum of three years;
- (11) A copy of the student registration form;
- (12) A copy of the continuing education provider's disclosure statement prepared pursuant to 16-99-120, and a statement about advertising and the medium to be used;
- (13) A schedule of all fees, tuition, and charges to be made;
- (14) A statement of the continuing education provider's policy for a refund, reexam, issuance of a certificate of completion of course and the means by which the statement of policies shall be provided to a student prior to registering for the course;
- (15) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount calculated using the formula of section 16-99-53(8)(A) applied to the maximum number of continuing education students in each classroom; or the giving of such other alternative forms of security in the same form, manner, amount and pursuant to the same procedures as required of real estate schools pursuant to section 16-99-53.1. The bond shall be issued by a surety authorized to do business in the state;
- (16) A certification fee;
- (17) A statement of ethical teaching practices;
- (18) A statement whether any of the continuing education provider's administrator, instructor, or other staff member possess a real estate license and whether any of them have been: disciplined by the real estate commission of any state or by any other regulatory body; convicted of a crime relating to the practice of the real estate profession; convicted of a crime in connection with the business of delivering educational courses, the profession of teaching, or in connection with the teaching of the proposed subject matter;
- (19) A statement that the provider applicant, has no stockholders possessing five per cent or more of the stock of the applicant, and that general partners, owners, employees, or consultants have not been disciplined by the commission of any state or by any other regulatory body, and have not been convicted of a crime related to the operation or delivery of educational courses or both;

- (20) Proposed form of the certificate of completion of course;
 - (21) A copy of the prescribed textbook(s) and student materials;
 - (22) Copy of the proposed advertisements;
 - (23) Where required, at least two different forms of final examinations including answers, and a bank of pre and post course exam questions sufficient to construct two examinations;
 - (24) A description of the course presentation;
 - (25) Signed consents from the continuing education provider, administrator, and instructor permitting the commission to conduct an investigation of the approved course offerings and the location where the instructions are being given. The investigation may involve classroom observations; surveys of students, instructors, administrators; and on-site monitoring of course with or without prior notice; and
 - (26) Other additional information as may be required by the commission.
- (b) A nonrefundable processing fee and the posting of a bond pursuant to this section shall not be required of a continuing education provider who is an accredited State of Hawaii institution of higher education, listed with the United States Department of Education as an accredited institution of higher learning. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-100 Criteria for approving and certifying continuing education courses. (a) The commission may approve and certify a continuing education course offering when the course is offered in this state and when the course offering satisfies all of the following:

- (1) Is for a core or elective course designed for any one of the following purposes:
 - (A) Protecting the general public in its real estate transactions;
 - (B) Enabling the licensee to serve the objectives of the consumer in a real estate transaction; or
 - (C) Enabling the licensee to maintain, develop, and improve a licensee's competency and professionalism in a changing marketplace;
- (2) Qualifies as either a consumer protection or professional standards or practice course as defined in this subchapter;
- (3) Is at least sixty per cent developed for a knowledge and abilities level beyond "professional entry";
- (4) Includes in the course major course concepts;
- (5) Specifies course objectives in terms of student performance; for example, when the student completes the course the student may

- be able to analyze, summarize, identify, and provide resolutions to ethical issues for a specific real estate transaction;
- (6) Provides for an objective evaluation of what students have learned;
 - (7) Consists of at least three and one-third clock hours;
 - (8) Issues upon the completion of the course offering, a certificate of completion of course;
 - (9) Requires the completion of the course within the license biennium;
 - (10) Is being taught by a continuing education instructor specifically certified to teach the course or specifically certified to teach any course in the course category;
 - (11) Is offered by a registered continuing education provider;
 - (12) Is delivered live by a certified continuing education instructor or by means of interactive television or by other means of interactive communication as approved by the commission;
 - (13) Provides for student evaluation of instructor and course;
 - (14) Has a course outline detailing the sequence of topics, amount of time allotted to each topic and reading assignments; and
 - (15) Meets such other conditions as requested by the commission.

(b) In making a determination pursuant to this section, the commission may consult with an advisory committee of real estate educators and practitioners having specialized knowledge and practical experience with the subject matter of the proposed course. Where the commission deems necessary, the commission may also retain a consultant to assist the commission in making a determination pursuant to this section. The consultant shall be compensated by monies provided from the real estate education fund. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-101 Courses not acceptable for continuing education requirements.

The commission may not certify continuing education course offerings designed for:

- (1) Training or education not directly related to real estate law or real estate practice;
- (2) Training or education related to passing a pre-license real estate salesperson or broker exam except as provided in sections 16-99-91 and 16-99-92;
- (3) Training or education in office and business skills, such as typing, speed reading, memory improvement, report writing, personal motivation, salesmanship, sales psychology, and time management;
- (4) Sales promotions or other meetings held in conjunction with general real estate brokerage activity;

- (5) Meetings which are a normal part of in-house training;
- (6) That portion of any offering devoted to meals or refreshments;
- (7) Any course or program that is less than three and one-third clock hours in duration; and
- (8) Such other courses which do not meet the definition of continuing education as determined by the commission. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-102 General processing procedures for a continuing education course offering. (a) An application for initial certification of a continuing education course offering shall be made on a form prescribed by the commission, not less than forty-five days before the proposed commencement date of the offering. Applications for course certification shall be made for all courses except those courses which have been developed by the commission or which have been designated by the commission as a core course. The certification shall be valid for the duration of the biennium license period for which certification is sought, unless sooner terminated as provided by rules of this subchapter. Subsequent offerings of a certified continuing education core or elective course shall be approved by the commission. Request for commission approval of any subsequent offering shall be made pursuant to section 16-99-103, at least fourteen days before the proposed commencement date.

(b) The initial and subsequent course offering application shall be accompanied by a nonrefundable processing fee as initially set forth in this subchapter and thereafter by the director of commerce and consumer affairs.

(c) Commission certification of a continuing education course offering or course category shall be for a particular course or course category and shall be identified by a number. The commission's approval of any subsequent offering of a particular certified continuing education course shall also be identified by a specified number. The course name and number, as certified by the commission, must be prominently displayed at the course site. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-103 Subsequent offerings of a certified continuing education course. (a) A provider shall not solicit students for registration for any subsequent offering of a certified continuing education course, without first obtaining the approval of the commission. In seeking the approval of the commission, the provider shall do all of the following:

- (1) Notify the commission of the provider's intention to solicit students. The notification shall contain the subsequent course offering date, time, location, and the instructor's name;
 - (2) Certify to the commission that the classroom location for the subsequent offering complies with all applicable county building, fire, and health requirements;
 - (3) Certify to the commission that the subsequent course offering satisfies the requirements of section 16-99-100; and
 - (4) Pay an additional course offering fee in such amounts as initially prescribed by this subchapter and thereafter as prescribed by rules adopted by the director of commerce and consumer affairs.
- (b) The commission may after a review of the information submitted pursuant to (a)(1), (2), and (3) of this section, approve the subsequent course offering and assign a course number. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-104 Application and criteria for certification of a continuing education instructor. (a) Every continuing education instructor shall be certified by the commission. Certification shall be obtained either for each continuing education course the instructor desires to teach or for each commission designated course category the instructor desires to teach or for both. Application for certification shall be made on a form provided by the commission.

(b) The commission may certify an applicant as a continuing education instructor when the commission determines that the applicant evidences an ability to teach and command knowledge of the subject matter of the proposed course or course category.

(c) A continuing education instructor applicant evidences an ability to teach by possessing either:

- (1) A bachelor's degree or higher in education; or
- (2) A current teaching designation from an organization recognized by the commission; or
- (3) A current teaching credential; or
- (4) A full-time current appointment to the faculty of an accredited institution of higher education; or
- (5) Three years of full-time teaching in any field. "Three years of full-time teaching" may have been accumulated over time; or
- (6) A certificate of completion from a special real estate instructor institute approved by the commission; or
- (7) Other as the commission may determine including substantial teaching in any field.

(d) A continuing education instructor applicant evidences a command knowledge of the subject matter of the proposed course or course category by possessing either:

- (1) A bachelor's degree or higher from an accredited institution of higher education from a school listed as an institution of higher learning by the United States Department of Education with a major in a field of study directly related to the subject matter of the proposed continuing education course or course category; or
- (2) A bachelor's degree or higher from an accredited institution of higher education from a school listed as an institution of higher learning by the United States Department of Education and five years of real estate experience directly related to the subject matter of the proposed continuing education course or course category; or
- (3) A licensed attorney in practice for at least three years in an area directly related to the subject matter of the proposed continuing education course or course category; or
- (4) An appointment to the real estate or any other faculty of an accredited college or university from a school listed as an institution of higher learning by the United States Department of Education in an area directly related to the subject matter of the proposed continuing education course or course category; or
- (5) A documented combination of: three years of experience directly related to the subject matter of the proposed continuing education course or course category; substantial participation in the development of real estate curriculum or courses at a knowledge and skill level beyond professional entry; substantial participation in the teaching of real estate courses directly related to the subject matter of the proposed continuing education course or course category at a knowledge and skill level beyond professional entry; including but not limited to seminars, workshops, educational training courses offered at any state accredited institution of learning, or at any accredited college or university from a school listed as an institution of higher learning by the United States Department of Education, or at any real estate office; or
- (6) Other as the commission may determine, including a demonstration before the commission of the individual's command knowledge of the proposed continuing education subject matter or course category desiring to teach and the ability to communicate the subject matter.

(e) Any individual meeting the criteria for approval as a continuing education instructor, may not be certified by the commission if the individual has

been disciplined by the commission of any state or by any license regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate, or has been convicted of a crime which substantially relates to the profession of teaching or to the practice of the subject matter proposing to teach.

(f) The commission may require each applicant, applying for certification as an instructor for a specific continuing education course or a course category, complete an instructor's workshop approved by the commission or complete viewing a commission approved audio video tape of such workshop.

(g) "Command knowledge" as used in this section means an understanding, application, evaluation, and synthesis of the body of knowledge in connection with the proposed continuing education course, or course category at a level past professional entry.

(h) In making a determination pursuant to this section, the commission may consult with an advisory committee of real estate educators, practitioners, and providers. Members of this committee may have either specialized knowledge or practical experience or both with the required qualifications and experience for teaching the subject matter of the proposed continuing education course or course category. Where the commission deems necessary, the commission may also retain a consultant to assist the commission in making a determination pursuant to this section. The consultant shall be compensated by monies provided from the real estate education fund. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-105 Biennial provider registration, biennial instructor and course certification. (a) A continuing education provider shall be biennially registered with the commission. The biennial registration renewal fee shall be paid to the department of commerce and consumer affairs, in advance of the beginning of the biennium, and before the end of the biennium of December 31.

(b) A continuing education course and an instructor shall be biennially certified by the commission. The biennial certification renewal fee shall be paid to the department of commerce and consumer affairs, in advance of the beginning of the biennium, and before the end of the biennium of December 31.

(c) The registration of a continuing education provider and the certification of a continuing education instructor and course shall expire at the end of the biennium on December 31. To renew a registration, an instructor certification, or course certification, each provider and instructor shall respectively, satisfy all of the following:

- (1) Complete a new application for registration as a provider, certification as an instructor, or for certification of course offering;

- (2) Satisfy respectively the initial registration and certification requirements of this subchapter;
- (3) Pay all required fees as set forth in section 16-99-107; and
- (4) Meet all other applicable requirements of this subchapter.
- (d) When available, as an additional renewal certification requirement, a continuing education instructor shall successfully complete on or before December 31, the end of the biennium, a commission sponsored or approved instructor's development workshop. The workshop must be completed prior to renewing a certification and within the time period of the current biennium. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-106 Forfeited registration, certification; reinstatement. (a) Failure, neglect, or refusal by any continuing education provider or instructor to pay the respective biennial renewal provider registration fee, instructor certification or course certification fee, shall constitute a forfeiture of the certificate of registration or certification.

(b) Any forfeited certificate of registration or certification may respectively be reinstated upon satisfaction of all of the following:

- (1) Written application;
- (2) Continued satisfaction of the respective requirements of sections 16-99-99, 16-99-100 and 16-99-104; and
- (3) Payment to the commission of the applicable sums specified in section 16-99-107.

(c) When available, as an additional reinstatement requirement, and prior to applying to the commission for reinstatement, a continuing education instructor shall have successfully completed a commission sponsored or approved instructor's development workshop. The workshop must be completed prior to making an application for reinstatement and within the current biennium. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-107 Fees; renewal of provider registration, course, instructor, certificate of completion of course, nonrefundable application fees. (a) The director of the department of commerce and consumer affairs shall adopt rules setting the fees for the registration and renewal of a provider registration, certification and renewal of a continuing education course and instructor certification, issuance of a certificate of completion of course and a nonrefundable application fee for certification of a continuing education course, instructor and registration of a provider.

(b) The commission shall support and collect the following initial fees:

- (1) The initial registration of a continuing education provider including the initial course certification, \$500;
- (2) Course certification of a course not submitted with the initial registration, \$500;
- (3) Each additional course offering, \$100;
- (4) Initial certification of a continuing education instructor, \$50;
- (5) Each issued course completion certificate, \$1;
- (6) Each continuing education provider's renewal registration, \$300;
- (7) Each continuing education instructor's renewal certification, \$50;
- (8) Renewal of course certification, \$100;
- (9) Reinstatement fee for forfeited provider registration, course certification, and instructor certification shall be the delinquent renewal fees plus a penalty fee of \$10 for each delinquent renewal period;
- (10) Compliance resolution fund for provider and instructor, \$20;
- (11) Biennial compliance resolution fund for provider and instructor, \$40; and
- (12) Nonrefundable application processing fee as follows:
 - (A) Provider registration, \$50;
 - (B) Instructor certification, \$100; and
 - (C) Course certification, \$500. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-108 Revocation or suspension of a continuing education course certification. The commission may revoke or suspend the certification of a continuing education course offering for any of the following causes:

- (1) The course offering no longer satisfies the requirements of section 16-99-100;
- (2) The course offering contains outdated or incorrect information;
- (3) The course offering is being taught by an instructor:
 - (A) Who is not certified by the commission;
 - (B) Who the commission has determined no longer demonstrates command knowledge of the subject matter of the course offering pursuant to the guidelines of section 16-99-110(1);
 - (C) Whose on-site and student evaluation results demonstrate that the instructor no longer has the ability to teach;
 - (D) Who has been disciplined by the commission or by any other license regulatory body of this state or any other state. The disciplinary action of any other license regulatory body

must have been for fraud, misrepresentation, deceit in connection with the purchase, sale, exchange, management of any interest in real estate; or the disciplinary action must be for any other conduct substantially related to the practice or profession of real estate;

- (E) Who has had a civil judgment rendered against the instructor for or who has been convicted of fraud, misrepresentation, deceit in connection with the purchase, sale, exchange, management of any interest in real estate; or for any other civil judgment or criminal conviction substantially related to the practice or profession of real estate;
- (4) The course offering is being offered by a provider who is not registered with the commission, or who having been registered with the commission fails to currently meet the requirements for provider registration of section 16-99-99; and
- (5) Such other cause as may be determined by commission. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-109 Revocation or suspension of a continuing education provider registration. The commission may revoke or suspend a continuing education provider's registration for any of the following causes:

- (1) The provider allows its instructor's to use outdated course information and material in the teaching of any continuing education course;
- (2) The provider permits a course offering to be taught by an instructor who is not certified by the commission or who demonstrates that the instructor is no longer qualified to teach the continuing education course offering pursuant to guidelines of section 16-99-110(1);
- (3) The provider permits an individual to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business; who has been disciplined by the commission or by any other license regulatory body of this state or of any other state. The disciplinary action of any other license regulatory body must have been for fraud, misrepresentation, deceit in connection with the purchase, sale, exchange, management of any interest in real estate; or the

- disciplinary action must have been for any other conduct substantially related to the practice or profession of real estate;
- (4) The provider permits an individual to have direct supervision of the continuing education provider's staff and instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business; who has been convicted of a crime in connection with operating a business relating to the delivery of educational courses;
 - (5) The provider allows an instructor to teach a course, who has been disciplined by the commission, or by any other license regulatory body of this State or of any other state, who has been convicted of a crime substantially relating to the profession of teaching or the practice of the subject matter being taught;
 - (6) The provider violates any statutes or rules relating to continuing education providers;
 - (7) The provider falsifies or misrepresents any information or document submitted to the commission;
 - (8) The provider fails to correct any noted defect pursuant to section 16-99-119;
 - (9) The provider fails to satisfy the record keeping requirements of sections 16-99-112 and 16-99-113; or
 - (10) Such other causes as may be determined by the commission. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-110 Revocation or suspension of a continuing education instructor certification. The commission may revoke or suspend the certification of a continuing education instructor for any of the following causes:

- (1) The instructor no longer demonstrates command knowledge and understanding of the subject matter of the course offering. The commission in making such a determination may use but are not limited by the following guidelines:
 - (A) The instructor is disciplined by the commission or by any other license regulatory body of this State or of any other state. The disciplinary action of any other license regulatory body must have been for fraud, misrepresentation, deceit in connection with the purchase, sale, exchange, management of any interest in real estate; or the disciplinary action must have been for any other conduct substantially related to the practice or profession of real estate;

- (B) The instructor is convicted of any crime substantially relating to the profession of teaching or for fraud, misrepresentation, deceit in connection with the purchase, sale, exchange, management of any interest in real estate; or the disciplinary action must have been for any other conduct substantially related to the practice or the profession of real estate;
- (C) The instructor uses outdated information and course materials in the teaching of any continuing education course;
- (2) The instructor falsifies, misrepresents, any information or document submitted to the commission; or
- (3) Such other causes as may be determined by the commission. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-111 Record keeping responsibilities of a continuing education provider. (a) A continuing education provider shall submit all required reports and records by the deadline prescribed by this subchapter and by other designated administrative deadlines as from time to time may be imposed by the commission.

(b) When a provider fails to keep, produce, or timely submit any report or record as required by this section, the commission may do any or all of the following:

- (1) Suspend, after written notice, without a hearing, the issuance of blank forms of certificates of course completion; or
- (2) Suspend the issuance of a course number for any subsequent course offering until such time the provider complies with the record keeping and submittal requirements of this subchapter; or
- (3) Revoke or suspend the registration of the provider. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-112 Record keeping information and retention period. (a) A real estate continuing education provider, shall maintain for a period of at least four years, records of course offerings (including names of instructors, dates of and locations of course offerings), student attendance, student registration, course completions, and personal information and resumes of its instructors and administrators. Each student record shall include, at minimum, the following:

- (1) A student's name, address, real estate license number, license status, continuing education course completion information

including name of and instructor for the course, and whether the student completed the course; course completion certificate number and amount of approved clock hours of continuing education credits earned;

- (2) A proof of actual course attendance including a verified sign-in and sign-out attendance sheet. The sign-in and sign-out sheet may be kept in another location other than the student's record. But reference to such location shall be made in each student's record. The name, address, phone number of the individual who verified the student's attendance shall also be noted in the student's record;
- (3) Where applicable, each student's final examination grade and actual administered pre and post test; and
- (4) A student's signed statement that the continuing education provider, prior to or at the time of course registration, did give each student written information disclosing the continuing education provider's fees, tuition, charges, refund policies, reexam policy if any, conditions for issuance of course completion certificate, and attendance.

(b) Within ten days of the end of any continuing education course, the continuing education provider shall issue to each student, having completed the course, a certificate of completion of course on a form prescribed by the commission. Except as provided in sections 16-99-91 and 16-99-92, the continuing education certificate of completion of course is valid only for the biennium license period in which the course was completed.

(c) Within ten days of the end of the course, the continuing education provider shall submit to the commission:

- (1) A listing of licensees who have completed the course with their issued course completion certificate numbers, location of course offering, course and instructor names, on a computer diskette, or on some other form prescribed by the commission together with a number of copies as requested by the commission;
- (2) Completed student evaluations of instructors for each course given;
- (3) Scored pre and post course tests and results where administered; and
- (4) Other information requested by the commission.

(d) A real estate continuing education provider shall issue a student a duplicate certificate of completion of course, upon receipt of a student's written request for such a certificate. The provider may charge the student a reasonable charge for honoring the request. The provider shall give written notice to the commission when issuing a duplicate certificate of completion. The notice shall include the name of the student, the student's license number, status, name of the

course, instructor and course and date on which the duplicate certificate was issued.

(e) For any course attended by more than fifty students, the provider shall provide at least one additional person other than the instructor to administer the course offering, including but not limited to keeping records of attendance, preparing and distributing certificates, and assuring that physical facilities meet the requirements of this subchapter. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-113 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by a continuing education provider for the purpose of promoting itself as a provider or for soliciting students and includes, but is not limited to, all printed and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, and minimally, include the name and address of the continuing education provider, the place where a catalogue or brochure may be obtained, a brief description of the course, a statement that the course can be used for satisfying continuing education requirements, and the number of course hours approved for continuing education.

(c) Continuing education providers shall keep on file, at its place of business, all advertising materials, subject to inspection and review by the commission upon written request.

(d) A continuing education provider shall not be advertised or be represented as having been "registered" with the commission until the provider has received written notification of its registration from the commission.

(e) All advertising materials and claims shall be free from misrepresentation and fraud.

(f) The commission, at any time, may require that a continuing education provider furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered by the commission, with the retractions published in the same manner as the claims themselves.

(g) A continuing education provider shall be held strictly responsible for the acts and promises of its agents who solicit students. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-114 Prohibited advertising practices. A continuing education provider shall not engage in any of the following acts:

- (1) Provide any information to the public or to a prospective student, which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it intended to influence;
- (2) Use any name, other than the full name, including the trade name, registered with the commission, for advertising or publicity purposes;
- (3) Advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A continuing education provider may indicate that it is "registered" with the commission to conduct courses to assist the licensee in obtaining the necessary continuing education hours for license renewal;
- (4) Make any warranties or guarantees that a student will pass a continuing education exam if given;
- (5) Advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written evidence of this fact is filed with the commission;
- (6) Make or imply any guarantee of employment or income to any student or prospective student unless the continuing education provider can in fact guarantee employment or income and the continuing education provider does so in writing;
- (7) Advertise a course which has not been certified by the commission, unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the certification by the commission; or
- (8) Collect from any prospective student any tuition or advance deposits unless the continuing education course is certified by the commission. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-115 Continuing education course entrance requirements. Prior to allowing any licensee into a continuing education course, a continuing education provider shall verify the identification of that licensee. At minimum, the continuing education provider shall require a picture identification and a current real estate pocket card or notification of licensed status from the commission. In limited circumstances, for reasons beyond the licensee's control, by way of example, but not limited to the example where a licensee is in the process of restoring a forfeited license, a provider may admit with a picture identification an individual, but shall not issue a certificate of completion of the course until the

licensee produces a duly issued real estate license pocket card. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-116 Discontinuing course offerings. Ten days prior to the cancellation of a registration, a provider shall in writing inform the commission of its intent to cancel its registration and discontinue the offering of courses. Within a reasonable time, after informing the commission of its intention to cancel its registration, the provider shall refund any course tuition and other fees collected in advance. The commission may cancel the provider's registration when the provider, in any license period, fails to schedule any continuing education course offerings for a period of twelve consecutive months. A notice of commission's pending action shall be mailed to the provider at the provider's last known business address by return receipt requested. The effective date of the cancellation, counting from the date of the notice, shall be the last day of the twelfth month, unless the provider makes a request for earlier termination or as otherwise continued by the commission. Upon notification by the commission of its action to cancel the provider's registration for lack of courses offered, the provider within fifteen days shall refund any tuition and fees collected. Any provider desiring to resume the offering of courses shall apply for a new registration pursuant to section 16-99-99. [Eff and comp 2/25/91] (Auth: HRS §467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-117 Material change. Any anticipated material change to a commission certified continuing education course offering, its curriculum, or objectives shall be submitted by the provider or by the instructor to the commission for approval thirty days prior to making the changes. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-118 Master continuing education instructors list. The commission shall maintain a list of approved continuing education instructors. The list shall, at minimum, be updated biennially and shall identify those instructors certified to teach any course within a course category or certified to teach a specific course. A continuing education provider may attach to its application for registration or certification of a course offering, an instructor application for the individual who will be teaching the course. Alternatively, the continuing education provider may designate as a course instructor, any individual from the commission's master list of continuing education instructors. The provider may also for good cause shown, substitute for any course offering any instructor from the master list. The

substitutions shall be reported in writing to the commission, within ten days after the substitution. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-119 Review, evaluation, and investigation. With or without the giving of any prior notice, the commission may conduct an investigation, evaluation, or a review of any application for certification as a continuing education instructor, course offering, and registration as a continuing education provider. With or without any prior notice, the commission may conduct a review and evaluation of a course offering; a review, investigation, and evaluation of: a continuing education instructor's teaching conduct and performance, and of a registered continuing education provider's operations and performance. A review, investigation, or evaluation may be conducted by any means including but not limited to: surveys, observations, physical inspections, and on-site monitoring, as well as interviews with providers, owners, administrators, instructors, and students. When the commission has reason to believe that a continuing education provider, administrator, instructor, or course offering may be in violation of this subchapter or is otherwise failing to maintain reasonable operating standards, the commission may give appropriate written notice specifying the grounds for the violation and that corrective action be taken by the provider, instructor, or administrator or all three within thirty days of the receipt of the notice. The provider, instructor, or administrator may request a hearing of the alleged violations and requested corrective acts pursuant to chapter 91, HRS, and chapter 16-201, Administrative Practice and Procedure. The written notice shall be transmitted by the commission to the continuing education provider, administrator, instructor or all three. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-120 Continuing education provider disclosure statement. (a) Each continuing education provider shall distribute to a prospective student, a disclosure statement that may be included in a brochure or catalogue. Each disclosure statement shall include, at minimum, the following:

- (1) Name, address, and telephone number of the continuing education provider;
- (2) Effective date of the information contained in the disclosure statement;
- (3) Name of the provider's administrator and the name of the provider's owner, officers, and directors;
- (4) Listing of available class locations, and if the class location is tentative, that fact shall be disclosed;

- (5) Continuing education provider's calendar of course offerings;
- (6) Statement defining class hours;
- (7) Schedule of all charges, fees, and tuition;
- (8) A statement that the curriculum is available for student's inspection upon request;
- (9) Course title and objectives;
- (10) Course outline or description of what topics will be included in the course;
- (11) Length of course;
- (12) Policy statement about attendance, absences, and make-up;
- (13) Policy statement about grading, if any, grading standards and reporting of grades;
- (14) Policy statement about student conduct;
- (15) Policy statement about refund of tuition and other fees collected;
- (16) Policy statement about the requirement's for issuance of a certificate of completion of course;
- (17) Policy statement, where applicable, on reexam limited to one retake;
- (18) The fact, when applicable, that a minimum number of students is necessary to operate a class; and
- (19) Statement of the conditions and terms of any advertised free course offering or the conditions and terms of any advertised free offering of any portion of the course or services.
- (b) The disclosure statement may further include the following:
 - (1) Provider's student financial assistance opportunities and plans; and
 - (2) The provider's placement services.
- (c) The disclosure statement shall be updated periodically so that the information contained in it is current. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-121 Faculty. (a) Each continuing education provider shall designate some person as administrator.

- (b) The administrator shall be responsible for:
 - (1) Complying with the commission's rules relating to continuing education providers as set forth in this subchapter;
 - (2) Providing reports and information as may be required by the commission;
 - (3) Informing the commission in writing ten business days prior to any changes in the continuing education provider's course offerings, course content, policies, programs, personnel, facilities, tuition,

- calendar, and all other matters changing the operation of the continuing education provider as originally registered;
- (4) Advertising by the continuing education provider; and
 - (5) Directing and supervising the continuing education provider's faculty, staff, and program. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-122 Display of certificate of registration and instructor's certificate. Each continuing education provider and each continuing education instructor shall prominently display a certificate of provider registration and instructor certification in its business office at all times. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-123 Classrooms. (a) Every continuing education provider shall have and maintain classrooms which have adequate space, seating, equipment, and instructional material.

(b) A provider shall certify to the commission that each classroom conforms to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-124 Classroom compliance. A registered continuing education provider shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the continuing education provider's facilities violate county building, fire, and health codes. The continuing education provider may resume its operations when it has remedied the violation. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-125 Tuition and other charges. (a) Tuition rates and all other charges shall be published in the continuing education provider's disclosure statement. No continuing education provider shall deviate from its published tuition rates and charges.

(b) Tuition and other charges collected from enrollees shall be refunded in full when the course for which the tuition and charges were collected did not start on the date published in the provider's disclosure statement or advertisement.

(c) Tuition and other charges shall be specifically set forth in the continuing education provider's registration form. The registration form shall expressly state the continuing education provider's policy regarding the return of tuition and other charges when a student is dismissed or withdraws voluntarily. Each student shall acknowledge acceptance of the continuing education provider's tuition policies on the continuing education provider's registration form. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-126 Books and supplies. (a) Where the student purchases books and supplies from a bookstore or other source, the student may retain or dispose of those items at the student's own discretion.

(b) Where the continuing education provider furnishes the books and supplies, with the cost thereof included in the total charge payable to the continuing education provider for the course, and the student is dismissed or withdraws voluntarily prior to the completion of the course, the continuing education provider shall refund in full the amount of the charge for the unissued books and supplies. Issued items may be disposed of at the discretion of the student. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

§16-99-127 Hearings. (a) When the commission denies an application for registration or renewal of a continuing education provider or an application or renewal for certification as a continuing education course or instructor; or when the commission deems it proper to deny, revoke, or suspend the registration of any continuing education provider, the certification of any course, or the certification of any instructor; the commission shall notify in writing the instructor, or the continuing education provider of the commission's action. The notification shall include a concise statement of the reasons for the commission's action and a statement that the instructor, or continuing education provider involved may request a hearing, except for those situations as provided for in section 16-99-119.

(b) Requests for a hearing shall be filed with the commission within sixty days of the date of the letter informing the continuing education provider or instructor of the commission's action or within such other time as otherwise provided for in section 16-201 of the Administrative Practice and Procedures and chapters 91, 92, and 467, HRS.

(c) When a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-11.5) (Imp: HRS §467-11.5)

SUBCHAPTER 10

CONDOMINIUM HOTEL OPERATORS

§16-99-147 Registration. (a) Registrations made pursuant to section 467-30, HRS, shall expire on December 31 of each year.

(b) All business entities registered pursuant to section 467-30(b) with the exception of sole proprietors, shall be currently registered, duly authorized, and in good standing with the business registration division.

(c) Trade names used by condominium hotel operators shall be currently registered with the commission and also currently registered, authorized by, and in good standing with the business registration division.

(d) On or before December 31 of each year, condominium hotel operators shall submit a complete reregistration application form, pay appropriate fees, submit evidence of a fidelity bond policy, and submit any other additional information substantiating compliance with the registration requirements of section 467-30, HRS, or be deemed by the commission as unregistered and subject to new registration application requirements.

(e) Within ten days of any changes, the condominium hotel operator shall notify the commission, in writing, of any changes in the information contained on the registration or reregistration application, exemption or exclusion forms.

(f) When making application for an exemption or exclusion from the provisions of section 467-30 (b)(1), HRS, the application shall be made on a form provided by the commission. The applicant shall submit for each condominium project, unless otherwise approved by the commission, zoning information, verified by a county official that the condominium hotel is in a hotel or transient lodging zone; together with true copies of the condominium project declaration and bylaws certified by the bureau of conveyances or land court specifically permitting a condominium hotel. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-148 Fidelity bond. (a) The fidelity bond shall be issued by a company currently authorized by the insurance commissioner of Hawaii to issue insurance in this state.

(b) Unless otherwise approved by the commission, the fidelity bond shall:

- (1) Name the department of commerce and consumer affairs as the certificate holder;

- (2) Provide the department of commerce and consumer affairs with written notification at least thirty calendar days prior to its cancellation or termination;
- (3) Provide coverage for condominium hotel operator activity only;
- (4) Name the condominium hotel operator registrant only as the insured and exclude any other person, trade name, or business entity as the named insured;
- (5) Specify that it is a fidelity bond and whether it is a blanket or name schedule type and if a name schedule type, lists all persons covered;
- (6) Specify an expiration date or that it is continuous;
- (7) Specify if the bond contains a deductible provision or a nondeductible provision; and
- (8) Provide other information as requested by the commission.
- (c) The amount of the deductible shall not exceed the greater of \$2,000 or five per cent of the face amount of the fidelity bond. In no case shall the amount of the deductible exceed the maximum deductible amount of \$5,000.
- (d) When the fidelity bond is a name schedule bond, the condominium hotel operator shall:
 - (1) Provide a certified statement listing the names of all persons handling or having control of the funds received by the condominium hotel operator; and
 - (2) Provide any changes in the listing of names submitted pursuant to subsection (d)(1), on an amended certified statement within ten calendar days of the change and an original of the amended fidelity bond policy.
- (e) Unless otherwise approved by the commission, the fidelity bond shall not contain a criminal conviction endorsement or rider which provides as a condition precedent to recovery on the bond, the prosecution or conviction of the employee.
- (f) The commission shall terminate the registration of a condominium hotel operator for failure to maintain a fidelity bond in compliance with section 467-30, HRS, and this chapter. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-149 Client's trust funds, accounting, and records. (a) Condominium hotel operators, including condominium hotel operators who are excluded or exempt from obtaining a real estate broker's license pursuant to section 467-30 (f), HRS, shall comply with section 16-99-4. For purposes of compliance, when the condominium hotel operator is not a real estate broker,

references to broker or principal broker in section 16-99-4 shall also mean "condominium hotel operator."

(b) The condominium hotel operator shall not commingle the client's trust funds with funds of other activities such as the association of apartment owners, lease rent, condominium managing agent, or the condominium hotel operator's own funds.

(c) The records of the client's trust funds shall not be commingled with the records of other activities such as association of apartment owners, condominium managing agents, or the condominium hotel operator's own funds. Upon demand, the records of the client's trust funds shall be subject to inspection by the commission or its representative. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-150 Conduct. (a) The condominium hotel operator shall ensure that the terms and conditions agreed upon between the apartment owner and the condominium hotel operator for operating a condominium hotel are in writing, and that a copy is given to each apartment owner. The terms and conditions include but are not limited to financial obligations, responsibilities and duties of the condominium hotel operator.

(b) The condominium hotel operator shall not accept any compensation, commission, rebate, or profit on any expenditure for or from an apartment owner, without the apartment owner's knowledge and written consent.

(c) The condominium hotel operator shall provide a monthly written accounting of the apartment owner's funds or a periodic written accounting based on the contractual agreement.

(d) The condominium hotel operator and its employees shall not violate any provisions of chapter 514A, HRS, or the rules adopted pursuant thereto and where the condominium hotel operator or its employees possess a real estate license, the licensees shall also not violate any provisions of chapter 467, HRS, and the rules relating thereto. [Eff and comp 2/25/91] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

Amendments to and compilation of chapter 16-99, Hawaii Administrative Rules, on Summary page dated January 3, 1991, were adopted on January 3, 1991, following a public hearing held on December 31, 1990, after public notices were given in the Honolulu Advertiser, West Hawaii Today, Hawaii Tribune-Herald, Maui News, and The Garden Island on November 30, 1990.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Peter N. Yanagawa
PETER N. YANAGAWA, Chairman
Real Estate Commission

APPROVED AS TO FORM: Date 1/24/91

/s/ Glenn S. Grayson
Deputy Attorney General

APPROVED: Date 1/28/91

/s/ Robert A. Alm
ROBERT A. ALM
Director of Commerce and Consumer Affairs

APPROVED: Date 2/14/91

/s/ John Waihee
JOHN WAIHEE
Governor
State of Hawaii

February 14, 1991
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-99
Hawaii Administrative Rules

January 3, 1991

SUMMARY

1. A new subchapter 9 (§§16-99-87 through 16-99-127) is added.
2. A new subchapter 10 (§§16-99-147 through 16-99-150) is added.
3. Chapter 99 is compiled.